

adopted concurrent resolution on the budget;²⁸³ and

§ 302(f)(2)(C)

(C) no provision of any bill or resolution, or any amendment thereto or conference report thereon, involving a change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of social security revenues²⁸⁴ unless such provision changes the income tax treatment of social security benefits.

The Chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under subsection (a)²⁸⁵ and revised functional levels and aggregates to reflect the application of the preceding sentence. Such revised allocations, functional levels, and aggregates shall be considered as allocations, functional levels, and aggregates contained in the most recently agreed to concurrent resolution on the budget, and the appropriate committees shall report revised allocations pursuant to subsection (b).²⁸⁶

²⁸³ In other words, if Congress cuts Social Security revenues below those anticipated in the budget resolution, it may not increase Social Security spending above the amount equal to the spending anticipated in the budget resolution minus the revenue shortfall. See also section 311(a)(2)(B)(ii)(I) *infra* p. 190.

²⁸⁴ The drafters of the Budget Enforcement Act intended this language to address the case where changes in income tax law had certain indirect effects on the Social Security trust fund. (See also section 311(a)(2)(B)(iii) *infra* p. 191 (to the same effect).) The drafters intended that these changes should not trigger a point of order under this section dealing with the levels in that trust fund. To achieve the intended result, however, the language should have read "social security revenues or outlays." This is so because when revenues result from the taxation of Social Security benefits, the revenues flow into the Treasury and the Treasury then makes a payment to the Social Security Trust Funds. The payment is scored as a positive outlay when made by the Treasury and a negative outlay when received by Social Security. Therefore, any changes to the income tax law that indirectly affect the amount of revenue collected from the income taxation of Social Security benefits would affect Social Security outlays rather than revenues.

²⁸⁵ See *supra* pp. 88-90.

²⁸⁶ See *supra* pp. 90-91.

§ 302(g)

(g) DETERMINATIONS BY BUDGET COMMITTEES. — For purposes of this section, the levels of new budget authority,²⁸⁷ spending authority as described in section 401(c)(2),²⁸⁸ outlays²⁸⁹ and new credit authority²⁹⁰ for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget²⁹¹ of the House of Representatives or the Senate, as the case may be.

²⁸⁷ Section 3(2) defines "budget authority." *See supra* pp. 11-13.

²⁸⁸ *See infra* pp. 251-254.

²⁸⁹ Section 3(1) defines "outlays." *See supra* p. 11.

²⁹⁰ Section 402(b) defines "new credit authority" (*see infra* p. 261), in part by reference to the definition of "credit authority" in section 3(10) (*see supra* p. 19).

²⁹¹ This subsection reflects the normal scorekeeping convention that Congress turns to its Budget Committees to assess the costs of legislation. *See also* section 201(g), *supra* p. 32; section 310(d)(4), *infra* p. 172; section 311(c), *infra* p. 194; section 313(e), *infra* p. 228; and section 258B(h)(4) of Gramm-Rudman-Hollings, *infra* p. 650.

CONCURRENT RESOLUTION ON THE BUDGET MUST BE ADOPTED BEFORE LEGISLATION PROVIDING NEW BUDGET AUTHORITY, NEW SPENDING AUTHORITY, NEW CREDIT AUTHORITY, OR CHANGES IN REVENUES OR THE PUBLIC DEBT LIMIT IS CONSIDERED

§ 303(a)

SEC. 303.²⁹² (a) IN GENERAL. — It shall not be in order²⁹³ in either the House of Representatives or the Senate to consider any bill,²⁹⁴ joint resolution, amendment,²⁹⁵ motion,²⁹⁶ or confer-



²⁹² Section 303 is codified as amended at 2 U.S.C. § 634 (1988 & Supp. IV 1992).

²⁹³ Although section 303 sets forth a prohibition, that prohibition is not self-enforcing, and requires a point of order from the floor for its enforcement. 130 CONG. REC. S7919 (1984); Senate Precedent PRL19840621-001 (June 21, 1984) (LEGIS, Rules database).

The Congressional Budget Act makes no exception for violations of negligible amounts. Cf. *infra* note 520 (regarding section 311(a)).

²⁹⁴ If a bill violates section 303, the point of order will lie notwithstanding that a complete substitute that would not violate section 303 is pending. 132 CONG. REC. S318-19 (1986); Senate Precedent PRL19860127-001 (Jan. 27, 1986) (LEGIS, Rules database) (inquiry of Sen. Metzenbaum; bill that would reduce revenues).

²⁹⁵ An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. See 132 CONG. REC. S7973-74, S8169, S8207-09 (June 19, 23 & 24, 1986); Senate Precedent PRL19860624-001 (June 24, 1986) (LEGIS, Rules database) (point of order by Sen. Packwood on amendment by Sen. Melcher that would reduce revenues in violation of section 303(a)).

²⁹⁶ Section 13207(a) of the Budget Enforcement Act added the word "motion" here. See *infra* p. 723. For a discussion of the motivation for the addition, see *supra* note 235.

ence report²⁹⁷ as reported²⁹⁸ to the House or Senate which provides —

- § 303(a)(1) (1) new budget authority²⁹⁹ for a fiscal year;
- § 303(a)(2) (2) an increase or decrease in revenues³⁰⁰ to become effective during a fiscal year;
- § 303(a)(3) (3) an increase or decrease in the public debt

²⁹⁷ Section 13207(a)(1)(C) of the Budget Enforcement Act struck "bill or resolution (or amendment thereto)" here and inserted "bill, joint resolution, amendment, motion, or conference report." See *infra* p. 723. Before enactment of the Budget Enforcement Act, by virtue of its application to "amendments," section 303 also applied to conference reports by precedent where amendments made in conference contain new matter not previously considered by the Senate. 124 CONG. REC. S9383-403 (1978); Senate Precedent PRL19780410-001 (Apr. 10, 1978) (LEGIS, Rules database); see also 131 CONG. REC. S6367-68 (1985); Senate Precedent PRL19850516-001 (May 16, 1985) (LEGIS, Rules database) (the Chair responded that a particular conference report would violate section 303(a)); 132 CONG. REC. S16,419-20, S16,611-13 (1986); Senate Precedent PRL19861016-002 (Oct. 16, 1986) (LEGIS, Rules database) (precedent headnote states that a point of order would lie against a conference report; point of order waived).

²⁹⁸ Cf. *infra* note 514 (by virtue of the words "as reported," a point of order will not lie under section 311(a) against a deficit-neutral bill that has been amended by an amendment that reduces revenues below the revenue floor).

²⁹⁹ See, e.g., 133 CONG. REC. S5381-83 (1987) (point of order by Sen. Chiles on amendment by Sen. Boschwitz).

Section 3(2) defines "budget authority." See *supra* pp. 11-13.

³⁰⁰ See, e.g., 132 CONG. REC. S8207-09 (1986); Senate Precedent PRL19860624-001 (June 24, 1986) (LEGIS, Rules database) (point of order by Sen. Packwood on amendment by Sen. Melcher that would reduce revenues); 132 CONG. REC. S318-19 (1986); Senate Precedent PRL19860127-001 (Jan. 27, 1986) (LEGIS, Rules database) (inquiry of Sen. Metzenbaum; bill that would reduce revenues); 131 CONG. REC. S8806-07 (1985); Senate Precedent PRL19850626-001 (June 26, 1985) (LEGIS, Rules database) (inquiry of Sen. Chafee; amendment that would reduce revenues); 131 CONG. REC. S6367-68 (1985); Senate Precedent PRL19850516-001 (May 16, 1985) (LEGIS, Rules database) (inquiry of Sen. Metzenbaum; conference report that would raise revenues).

limit³⁰¹ to become effective during a fiscal year;

§ 303(a)(4) (4) new entitlement authority³⁰² to become effective during a fiscal year;

§ 303(a)(5) (5)³⁰³ in the Senate only, new spending authority (as defined in section 401(c)(2)³⁰⁴) for a fiscal year; or

§ 303(a)(6) (6)³⁰⁵ in the Senate only, outlays,³⁰⁶

³⁰¹ The public debt limit is set at 31 U.S.C. § 3101 (Supp. III 1991), *amended by the Omnibus Budget Reconciliation Act of 1993*, Pub. L. No. 103-66, § 13411, 107 Stat. 312 (1993).

³⁰² Section 303(a) prohibits legislation that would create entitlement authority that would become effective before Congress has agreed to a budget resolution for the appropriate fiscal year, and such legislation would not fall within an exception in section 303(b). 129 CONG. REC. S9826, S9845, S9852 (1983); Senate Precedent PRL19830713-004 (July 13, 1983) (LEGIS, Rules database). In other words, an entitlement that begins in a year beyond the budget resolution violates section 303(a). 130 CONG. REC. S7070-71, S7102-12, S7175, S7181 (1984); Senate Precedent PRL19840613-002 (June 13, 1984) (LEGIS, Rules database); *see also* 132 CONG. REC. S16,419-20, S16,611-13 (1986); Senate Precedent PRL19861016-002 (Oct. 16, 1986) (LEGIS, Rules database) (precedent headnote states that a point of order would lie against a conference report if that conference report contained entitlements to become effective in years beyond the resolution; point of order waived).

Entitlements begin in the year payments are made, not when benefits vest. 130 CONG. REC. S7107 (1984); Senate Precedent PRL19840613-002 (June 13, 1984) (LEGIS, Rules database) (inquiry of Sen. Armstrong).

Section 3(9) (*see supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 252). For a discussion of language that ensures that authority will not constitute entitlement authority, *see infra* note 652.

³⁰³ Section 13205(a)(3) of the Budget Enforcement Act amended this paragraph to read as it does now. *See infra* p. 720. Section 13205(a)(1) of the Budget Enforcement Act repealed what used to be paragraph (5). *See infra* p. 720. Before enactment of the Budget Enforcement Act, paragraph (5) read as follows: "(5) new credit authority for a fiscal year." Effective for fiscal year 1992 and after, title V addresses credit (*see infra* pp. 273-298), and the provision of what was credit authority has become the provision of either budget authority or entitlement authority.

³⁰⁴ *See infra* pp. 251-254.

³⁰⁵ Section 13205(a)(3) of the Budget Enforcement Act added this paragraph. *See infra* p. 720.

until the concurrent resolution on the budget for such fiscal year (or, in the Senate, a concurrent resolution on the budget covering such fiscal year)³⁰⁷ has been agreed to³⁰⁸ pursuant

³⁰⁶(...continued)

³⁰⁶ Section 3(1) defines "outlays." See *supra* p. 11.

³⁰⁷ Section 13205(a)(4) of the Budget Enforcement Act added the parenthetical "(or, in the Senate, a concurrent resolution on the budget covering such fiscal year)." See *infra* p. 720. Thus, for Senate committees other than the Appropriations Committee (for which subsection (b)(2) provides an explicit exception), no point of order will lie if the spending provided begins in any one of the five years covered by the most recent budget resolution.

³⁰⁸ On a number of occasions, the House and the Senate have passed simple resolutions providing that the Congress shall be deemed to have agreed to a budget resolution for the fiscal year. As a consequence of these resolutions, points of order would not lie under section 303, but would lie under sections 302 and 311.

On July 16, 1985, the House passed H. Res. 221, which waived points of order under section 303(a) against consideration of any appropriations bill. That resolution stated (in relevant part):

Sec. 2. All points of order for failure to comply with the provisions of section 303(a) of the Congressional Budget Act of 1974 (Public Law 93-344) are hereby waived against the consideration of any general appropriation bill making appropriations for fiscal year 1986 reported by the Committee on Appropriations before July 12, 1985.

H. Res. 221, 99th Cong., 1st Sess., 131 CONG. REC. H5666-75 (July 16, 1985).

Eight days later, the House passed H. Res. 231, which deemed the Congress to have adopted the House-passed budget resolution for purposes of applying points of order in the House. H. Res. 231 stated:

H. RES. 231

Resolved, That, for the purposes of the provisions of the Congressional Budget Act of 1974 (Public Law 93-344), as they apply to the House of Representatives, the Congress shall be considered to have adopted H. Con. Res. 152, revising the congressional budget for the United States Government for the fiscal year 1985 and setting forth the congressional budget for the United States Government for the fiscal years 1986, 1987, and 1988, as adopted by the House on May 23, 1985. For the purposes of this resolution, the allocations of budget authority and new entitlement authority printed in the Congressional Record of July 23, 1985 by Representative Gray of Pennsylvania, shall be considered as allocations made pursuant to section 302(a) of the Congressional Budget Act of 1974 (Public Law 93-344).

(continued...)

³⁰⁰(...continued)

SEC. 2. This resolution shall cease to apply upon final adoption by the House and the Senate of a concurrent resolution on the budget for the applicable fiscal year or years.

H. Res. 231, 99th Cong., 1st Sess., 131 CONG. REC. H6171 (daily ed. July 24, 1985).

On June 17, 1987, the House Rules Committee reported to the House H. Res. 197, a similar resolution. H. Res. 197, 100th, 1st Sess., 134 CONG. REC. H5212, D837 (daily ed. June 17, 1987). The next day, however, the Rules Committee reported a rule (H. Res. 201) for the consideration of the conference report on the budget resolution for that year (H. Con. Res. 93) that also provided for laying H. Res. 197 on the table. See 134 CONG. REC. D847-48 (daily ed. June 18, 1987). The House passed that rule on June 23. See *id.* at H5398-407 (daily ed. June 24, 1987).

On June 19, 1990, the House passed another resolution, H. Res. 413, to deem the House-passed budget resolution to govern the House. H. Res. 413 stated (in relevant part):

Sec. 3. (a) For purposes of sections 302 and 311 of the Congressional Budget Act of 1974, as amended (Public Law 93-344, as amended by Public Law 99-177) as they apply to the Committee on Appropriations and consideration of general appropriation bills, amendments thereto or conference reports thereon, in the House of Representatives, the Congress shall be considered to have adopted H. Con. Res. 310, setting forth the congressional budget for the United States Government for the fiscal years 1991, 1992, 1993, 1994, and 1995, as adopted by the House on May 1, 1990. For purposes of this resolution, the allocations of spending and credit responsibility to the Committee on Appropriations printed in the star print of H. Rept. 101-455 shall be considered as allocations made pursuant to section 302(a) of the Congressional Budget Act of 1974, as amended.

(b) This section shall cease to apply upon final adoption by the House and the Senate of a concurrent resolution on the budget for fiscal year 1991.

H. Res. 413, 101st Cong., 2d Sess., 136 CONG. REC. H3733 (daily ed. June 19, 1990).

The Senate followed suit on July 12, 1990, as the Senate Budget Committee reported and the Senate passed by unanimous consent S. Res. 308, a simple resolution to give the Appropriations Committee its allocations. S. Res. 308 stated:

RESOLUTION

To provide budget allocations for fiscal year 1991 to the Senate Committee on Appropriations under section 302(a) of the Congressional Budget Act of 1974.

(continued...)

³⁰³(...continued)

Resolved, That (a) for purposes of section 302(a) of the Congressional Budget Act of 1974 the estimated allocation of the appropriate levels of budget totals for the Senate Committee on Appropriations shall be —

- (1) \$690,606,000,000 in total budget outlays; and
- (2) \$680,512,000,000 in total new budget authority,

until a concurrent resolution on the budget for fiscal year 1991 is agreed to by the Senate and House of Representatives pursuant to section 301 of Congressional Budget Act of 1974.

(b) Notwithstanding the provisions of subsection (a) and if the Bipartisan Executive-Congressional Economic Summit reaches an agreement on appropriate levels of budget totals different from those contained in subsection (a) and the Congress adopts such levels, the levels agreed to by the Bipartisan Executive-Congressional Economic Summit shall supersede the levels contained in subsection (a).

S. Res. 308, 101st Cong., 2d Sess., 136 CONG. REC. S9642-43 (daily ed. July 12, 1990).

In related legislation, the Spending Reduction Act of 1984, a reconciliation bill created in response to instructions in a budget resolution adopted during the previous calendar year, stated the sense of the House that in the absence of agreement on a budget resolution, the House would abide by the House-passed budget resolution (H. Con. Res. 280). Similar provisions stated the sense of the Senate regarding defense and non-defense ceilings for appropriations activity, but the Senate did not give these ceilings the status of an allocation to the Appropriations Committee under section 302(a). The Spending Reduction Act provides (in relevant part):

TITLE I — GENERAL PROVISIONS

SENSE OF SENATE STATEMENT

SEC. 2101. It is the sense of the Senate that ceilings on fiscal year 1985 appropriation bills shall not exceed, in the aggregate, \$139.8 billion for non-defense, discretionary accounts, and shall not exceed \$299 billion for defense accounts. Further, it is the sense of the Senate that the allocations of these sums, normally done through the section 302(b) process under the Congressional Budget and Impoundment Control Act of 1974, in the absence of a first concurrent budget resolution for fiscal year 1985 will be done by the Senate Appropriations Committee to guide its subcommittees in their separate deliberations on individual appropriation bills for fiscal year 1985.

SENSE OF HOUSE STATEMENT

(continued...)