tax break

by William G. Gale and Peter R. Orszag

Sunsets in the Tax Code

The authors are codirectors of the Tax Policy Center. Gale is the Arjay and Frances Fearing Miller Chair in Federal Economic Policy at the Brookings Institution. Orszag is the Joseph A. Pechman Senior Fellow at Brookings. The authors thank David Gunter, Matt Hall, Brennan Kelly, and Jeff Rohaly for assistance. The views expressed are their own and should not be attributed to the trustees, officers, funders, or staff of the Brookings Institution or the Tax Policy Center.

I. Introduction

Events leading up to the enactment of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTRRA) highlighted the role of tax provisions that expire at a given date, which are commonly known as "sunsets." In this article, we examine trends in the magnitude and nature of sunsets, and discuss some of their implications. Principal conclusions include:

- Sunsets have long been a feature of the tax code, but they have traditionally involved relatively minor provisions. The 2001 tax cut represented a dramatic departure from this history, by including a massive sunset at the end of 2010. The aggressive use of sunsets has continued since then. The potential extension of these expiring provisions should now be considered a central determinant of the fiscal and economic outlook.
- If all the temporary provisions in the conference agreement were extended, the total revenue loss through 2013 would amount to $1.09 trillion, more than three times the official $350 billion revenue estimate.
- Removing all the sunsets in the tax code, including those in JGTRRA, would involve a revenue loss of almost $2 trillion over the next decade. Including the added interest payments due to increased federal debt, the implied increase in the budget deficit would be $2.3 trillion through 2013.
- By way of comparison, the 2001, 2002, and 2003 tax cuts reduced revenues by $1.7 trillion between 2001 and 2013, so removing the sunsets would more than double the implied revenue loss to $3.6 trillion. Counting the additional debt service, the three tax cuts will cost more than $4 trillion for 2001-2013, if they are extended.
- The 10-year figures understate the implied long-term magnitude of the sunsets because the costs rise dramatically over time. The revenue loss in 2013 alone would amount to $430 billion, or 2.4 percent of GDP. By comparison, the 75-year actuarial shortfall in the Social Security Trust Fund is 0.73 percent of GDP.
- In principle, sunsets might be justifiable under certain circumstances. Sunsets are appropriate for policies that are designed to be — and should be — temporary. They may also provide flexibility in policymaking, and be useful in focusing policymakers' attention on fiscal issues. In practice, however, none of these potential justifications appears to be the motivation for the recent dramatic expansion in sunsets.
- Recent sunsets have been motivated by the desire to manipulate budget rules and hide the likely costs of new tax cuts. That is, in practice, the sunsets are being used to fit a larger annual tax cut within a given multiyear budget total. Sunsets that are used to increase the underlying annual size of a tax cut put fiscal policy on an increasingly unsustainable course, and leave policymakers in the future with *less* flexibility than they would otherwise have, since allowing sunsets to take effect is likely more difficult than forgoing new tax cuts in the future.
- Sunsets used to manipulate budget limits create needless uncertainty over the future structure of the tax code. It is important to recognize, however, that the fundamental source of that uncertainty is the long-term fiscal gap facing the nation (which is exacerbated when sunsets are used to enact larger annual tax cuts within a given multiyear budget total). The sunsets themselves are only the most obvious manifestation of the underlying uncertainty surrounding the tax code.
- The single most useful policy change to prevent the creation of new sunsets and the removal of existing sunsets would be to reinstate permanently the pay-as-you-go rules that required that mandatory spending increases or tax cuts be financed by other changes in taxes or spending. Policymakers could usefully consider changing the budget rules in other ways to address sunsets more aggressively.

- As sunsets have come to dominate the tax code, the official budget projections have become increasingly divorced from reality. The Congressional Budget Office should prominently include, in every major budget analysis, alternative baseline projections assuming that temporary tax provisions continue. CBO treats mandatory spending provisions that expire as though they will be granted a continuance and should do the same for tax provisions.

II. Trends and Magnitudes

In the 1990s, sunsets applied generally only to a series of relatively minor tax provisions, and were largely limited to a set of tax credits or special provisions referred to collectively as "the extenders." These provisions included items such as the research and experimentation tax credit, and were typically granted a continuance each time they were due to expire.

The use of sunsets changed dramatically in the 2001 tax legislation (the Economic Growth and Tax Relief Reconciliation Act of 2001, or EGTRRA), when Congress and the administration agreed to sunset the tax cut in 2010. The Byrd rule required 60 votes to enact a tax cut beyond the 10-year window, which will end in September 2011. But the tax cut sunset in December 2010, partially to allow Congress to enact more tax cuts while remaining within the 10-year budget resolution tax limit. It is important to note that the Byrd rule did not necessitate the sunset: If 60 Senators had supported a permanent version of the 2001 tax cut, the Byrd rule could have been waived. The sunset thus fundamentally reflected the relatively narrow margin of support for that tax cut.

The most recent tax cut goes even farther than the 2001 tax cut, and contains the following sunsets:

- Acceleration of the child credit increase, marriage penalty relief, and increase in the 10 percent bracket scheduled for the future under the 2001 tax legislation. These accelerations sunset at the end of 2004.
- Increase in the alternative minimum tax (AMT) exemption, which sunsets at the end of 2004.
- Increase in the bonus depreciation allowance for corporations, which sunsets at the end of 2004.
- Increase in section 179 expensing for small businesses, which sunsets after 2005.
- Reductions in capital gains and dividend tax rates, which sunsets at the end of 2008.

Sunsets are now a *de facto* element of fiscal policy. Besides the sunsets in the conference agreement, the Internal Revenue Code now contains numerous other expiring provisions. Table 1 reports information on the cost of removing the sunsets:

- Extending the provisions of EGTRRA that expire in 2010 would reduce revenue by $610 billion over the FY 2003-2013 window.
- Extending two provisions regarding the AMT (the increase in the AMT exemption through 2004 legislated by EGTRRA and the temporary use of nonrefundable credits in the AMT legislated in the 2002 stimulus legislation) would reduce revenue by $191 billion, given the extension of EGTRRA.
- Extending the 30 percent bonus depreciation provision from the 2002 stimulus legislation would reduce revenue by $256 billion.
- Extending the provisions of JGTRRA would reduce revenue by $736 billion. This estimate for the 2003 tax cut includes the costs of extending the *increase* in the AMT exemption above the increase enacted in EGTRRA and the *increase* in bonus depreciation above the creation of bonus depreciation in 2002.[1]
- Extending the other expiring provisions, including EGTRRA changes that expire before 2010, would reduce revenue by $165 billion.

In total, the cost of extending all expiring tax provisions over the next 10 years would amount to $1.96 trillion. With interest, the budgetary cost would exceed $2.3 trillion. The 10-year figures understate the potential magnitude of removing the sunsets because the costs rise dramatically over time. The revenue loss in 2013 alone would amount to $430 billion, or 2.4 percent of GDP.

Table 1 (p. 1555) underscores that sunsets are now a dominant feature of the fiscal landscape. Figure 1 (p. 1556) shows the dramatic increase in the use of sunsets since 1992. The data through January 2003 are based on Joint Committee on Taxation (JCT) figures published by the Congressional Budget Office in its Economic and Budget Outlook from various years. The figure shows, for the 5th and 10th year after the date listed, the revenue loss that would occur if all sunsetted provisions in the tax code were extended. For example, in January 1992, 13 revenue-reducing provisions of the tax code (including the low-income housing credit, the research and experimentation tax credit, and the targeted jobs tax credit) were scheduled to sunset within the next five years, along with eight revenue-increasing provisions. The JCT estimated that the revenue effect in the 5th year, fiscal year 1997, from extending those provisions would be a *gain* of $9 billion. By January 2002, the revenue effect in the fifth year (2007) from all sunsetted provisions in the tax code had deteriorated to a revenue loss of $38 billion. The revenue loss in the 10th year (2012) was projected at $297 billion, which largely reflects the effects of the 2010 sunset in the 2001 tax cut. Figure 2 (p. 1558) shows these figures as a share of projected GDP.

The final bars in Figures 1 and 2 represent an estimate of all the sunsets in the tax code following enactment of JGTRRA. (The estimates for the cost of extending the provisions in JGTRRA are taken from Table 1.) As the figure shows, following enactment of the con-

(Text continued on p. 1556.)

[1]Our figures imply that extending all the provisions of the 2003 tax cut except AMT relief would reduce revenues by $491 billion (=735.7-244.4) through 2013. Greenstein, Kogan, and Friedman (2003), using JCT estimates and other sources, obtain a similar estimate of $457 billion.

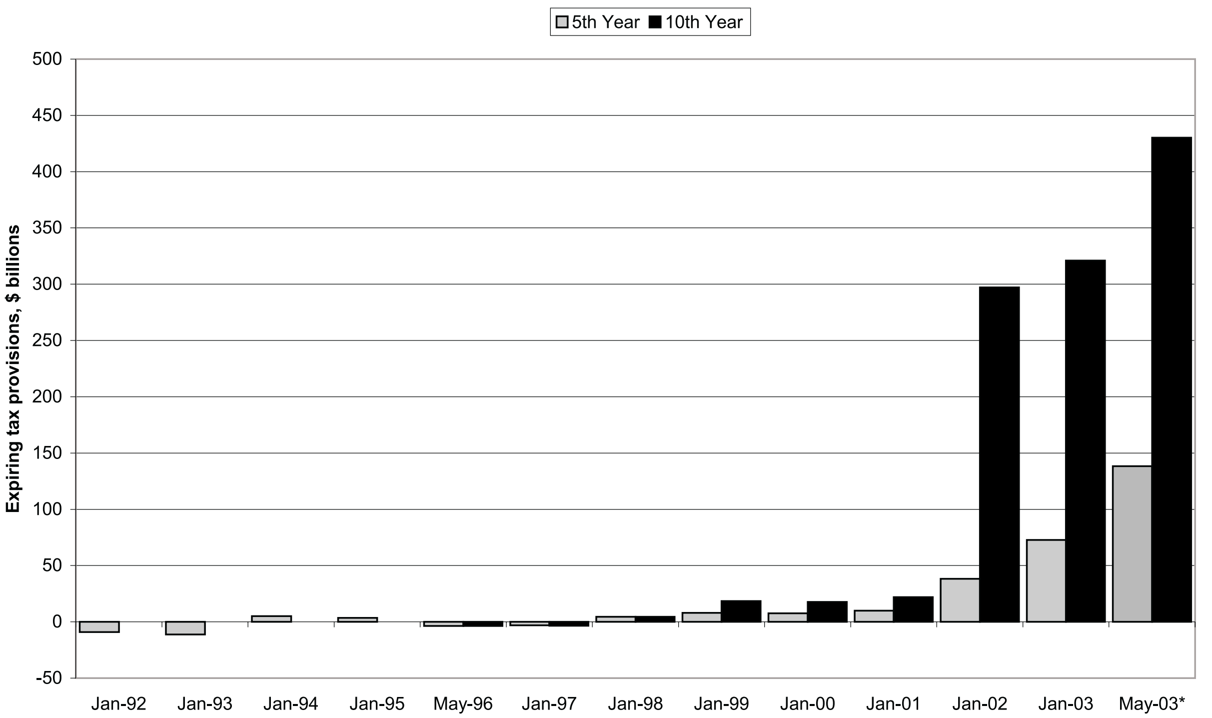
Table 1: Budget Effects of Removing Sunsets

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2003-13
Extend EGTRRA Provisions that Expire in 2010[1] — $ billions												
Revenue	0.1	0.5	0.8	1.0	1.3	1.7	1.6	2.4	131.0	230.2	239.7	610.3
Interest[2]	0.0	0.0	0.0	0.1	0.2	0.3	0.4	0.5	4.1	14.2	27.7	47.5
Subtotal	0.1	0.5	0.8	1.1	1.5	2.0	2.0	2.9	135.1	244.4	267.4	657.8
Extend AMT Provisions[3] — $ billions												
Increase in Exemption Under EGTRRA	0.0	0.0	3.3	10.2	14.4	18.2	22.4	25.3	21.5	14.8	17.2	147.3
Treatment of Nonrefundable Credits	0.0	0.1	1.0	2.4	3.5	4.1	4.7	5.2	6.0	7.9	8.8	43.7
Revenue	0.0	0.1	4.3	12.6	17.9	22.3	27.1	30.5	27.5	22.7	26.0	191.0
Interest	0.0	0.0	0.1	0.6	1.4	2.6	4.1	5.9	7.8	9.5	11.4	43.4
Subtotal	0.0	0.1	4.4	13.2	19.3	24.9	31.2	36.4	35.3	32.2	37.4	234.4
Extend 30% Bonus Depreciation in JCWA[4] — $ billions												
Revenue	0.0	0.0	27.7	41.7	38.9	34.4	29.4	24.9	21.5	19.0	18.3	255.8
Interest	0.0	0.0	0.7	2.6	5.0	7.2	9.4	11.3	13.2	15.0	16.9	81.3
Subtotal	0.0	0.0	28.4	44.3	43.9	41.6	38.8	36.2	34.7	34.0	35.2	337.1
Extend the 2003 Tax Cut[5] — $ billions												
Expansion of the 10% Bracket	0.0	0.0	5.2	7.4	8.2	5.3	4.3	4.1	4.1	4.0	3.8	46.4
Expansion of the Child Tax Credit	0.0	0.0	9.3	12.4	12.2	12.1	8.9	2.0	0.0	0.0	0.0	56.9
Increase in the AMT Exemption[6]	0.0	0.0	6.5	10.9	14.5	20.1	25.6	31.7	38.1	45.0	52.1	244.5
Dividend and Capital Gains Change	0.0	0.0	0.0	0.0	0.0	0.0	23.5	32.7	34.4	36.2	38.1	164.9
Marriage Penalty Relief	0.0	0.0	9.4	9.0	5.4	2.3	0.4	0.0	0.0	0.0	0.0	26.5
Interactions	0.0	0.0	2.1	2.6	2.5	1.5	1.0	0.9	1.0	1.0	1.0	13.6
179 Business Expensing[7]	0.0	0.0	0.0	1.3	1.4	1.4	1.5	1.6	1.7	1.8	1.8	12.5
Raise Bonus Depreciation to 50%[8]	0.0	0.0	18.5	27.8	25.9	22.9	19.6	16.6	14.3	12.7	12.2	170.5
Revenue	0.0	0.0	51.0	71.4	70.1	65.6	84.8	89.6	93.6	100.7	109	735.8
Interest	0.0	0.0	1.3	4.7	8.8	13.0	17.8	23.5	29.7	36.6	44.2	179.6
Subtotal	0.0	0.0	52.3	76.1	78.9	78.6	102.6	113.1	123.3	137.3	153.2	915.4
Extend Other Expiring Tax Provisions[9] — $ billions												
Revenue	0.0	-0.5	1.1	6.1	11.1	14.3	15.8	18.3	26.0	35.7	37.0	164.9
Interest	0.0	0.0	0.0	0.2	0.7	1.4	2.3	3.3	4.7	6.7	9.0	28.3
Subtotal	0.0	-0.5	1.1	6.3	11.8	15.7	18.1	21.6	30.7	42.4	46.0	193.2
Extend All Expiring Tax Provisions — $ billions												
Revenue	0.1	0.1	84.8	132.8	139.3	138.3	158.6	165.7	299.6	408.2	430.1	1,957.6
Interest	0.0	0.0	2.2	8.2	16.1	24.5	33.9	44.5	59.5	82.0	109.1	380.0
Total	0.1	0.1	87.0	141.0	155.4	162.8	192.5	210.2	359.1	490.2	539.2	2,337.6

Extend All Expiring Tax Provisions — in percent of GDP[10]												
Revenue	0.0	0.0	0.7	1.1	1.1	1.0	1.1	1.1	1.8	2.4	2.4	1.4
Interest	0.0	0.0	0.0	0.1	0.1	0.2	0.2	0.3	0.4	0.5	0.6	0.3
Total	0.0	0.0	0.7	1.0	1.2	1.2	1.3	1.4	2.2	2.9	3.0	1.7

[1]Congressional Budget Office. "The Budget and Economic Outlook: Fiscal Years 2004-2013." January 2003. Table 3-11.
[2]All interest costs are calculated using the CBO debt service matrix, March 2003.
[3]Congressional Budget Office. "The Budget and Economic Outlook: Fiscal Years 2004-2013." January 2003. Table 3-11.
[4]Congressional Budget Office. "The Budget and Economic Outlook: Fiscal Years 2004-2013." January 2003. Table 3-11.
[5]Calculations by author using the Tax Policy Center Microsimulation Model unless otherwise noted. Uses 75-25 split to convert CY figures into fiscal year figures. Baseline is current law including the 2003 tax cut amended to include removing the sunset of EGTRRA and the AMT provisions.
[6]Increase to AMT exemption includes only the increase above the exemption under EGTRRA.
[7]Calculation by author based on Joint Committee on Taxation estimate of costs in fiscal year 2005 ($3.69 billion). Assumes moving forward that the cost remains constant at 30 percent of the final year costs as a share of GDP.
[8]Calculation by author based on CBO. "The Budget and Economic Outlook: Fiscal years 2004-2013." January 2003. Table 3-11. Assumes that an increase in bonus depreciation from 30 percent to 50 percent adds an additional 2/3 the published cost.
[9]Calculation by author based on CBO. "The Budget and Economic Outlook: Fiscal years 2004-2013." January 2003. Table 3-11. Does not include the effect of expiring provisions whose costs are already noted above.
[10]Congressional Budget Office. "The Budget and Economic Outlook: Fiscal Years 2004-2013." January 2003. Table E-2.

Figure 1: Sunsets in the Tax Code, 1992-2003, $ billions



* Estimates include JGTRRA.

ference agreement, extending all sunsetted tax cuts would reduce revenue by an estimated $138 billion in 2008 and $430 billion in 2013 (Figure 1), which represent 1 and 2.4 percent of projected GDP in those years, respectively (Figure 2). Appendix Table 1 provides the data used in Figures 1 and 2.

III. Issues and Implications

A. The Fiscal Outlook

The projected revenue losses from recent tax legislation depend importantly on how the sunsets are resolved. The official revenue losses for 2001-13 for the 2001, 2002, and 2003 tax cuts total about $1.7 trillion (Joint Committee on Taxation (2001, 2002, and 2003)). If the sunsets were removed, however, the net revenue losses would more than double, to $3.6 trillion. Including the added interest payments due to higher federal debt, the cost to the federal budget would be in excess of $4 trillion.

Sunsets are not the only looming tax problem. Even if the temporary AMT relief included in EGTRRA, the 2002 legislation, and the conference agreement were made permanent (along with all the other expiring provisions in the tax code), Tax Policy Center estimates indicate that more than 18 million taxpayers would be on the AMT in 2013. Avoiding a massive increase in the number of filers on the AMT will either require a significant shift in tax burdens toward high-income households, or a further reduction in income tax revenues.

The nation also faces significant long-term fiscal challenges associated with Medicare and Social Security. If all of the sunsets were removed, the long-term revenue loss of 2.4 percent would be three times the 75-year actuarial deficit in Social Security and exceeds even the permanent deficit in that program (Gale and Orszag 2003, Orszag, Kogan, and Greenstein 2003).

B. Distributional Effects

Removing the sunsets would not only be expensive, it would be extraordinarily regressive. This is not surprising, since the original tax cuts are regressive, but the scale of the effect may be noteworthy. Table 2 (p. 1559) and Appendix Table 2 (p. 1561) show the distributional effects, in 2013, of removing all of the sunsets in the code. Households with income above $1 million would receive *income* tax cuts of $182,000 per year, if the sunsets were removed. This estimate does not include estate tax cuts, which would likely average tens of thousands of dollars per year or more for these households.[2] After-tax income would rise by almost 7 percent for households with income above $1 million, again not including the estate tax change. Households in the middle quintile of the income distribution would receive a tax cut of about $900, or about 2.6 percent of after-tax income. Households in the bottom quintile would receive virtually nothing.

C. Sound Policy or Deceptive Accounting?

Whether sunsets are a good idea depends in large part on why they were enacted. Two sets of arguments could justify sunsets in principle, but neither applies in practice.

First, in cases where tax incentives *should* be temporary, sunsets represent sound policy.[3] But it should be clear that the massive recent increase in sunsets is not motivated by an increased desire for truly temporary tax cuts.

Second, Maggs (2003) and Murray (2003) note that even sunsets on provisions that are otherwise intended to be permanent could be construed to have some value. Controlling for the size of an annual tax cut, a sunset may provide more future policy flexibility than a permanent tax cut, since it is presumably easier politically to allow a sunset to take effect than to explicitly reverse a tax cut. Thus, the sunsets might in principle make it easier to renegotiate the structure and level of taxes, if for no other reason than that they will focus attention on the issue. They could therefore help policymakers address in the near future the long-term fiscal gap facing the nation. But a reality check is appropriate. To the extent that policymakers in the near future will disproportionately be the same people who rushed to embrace sunsets as a way of avoiding hard budget decisions, we suspect this view may prove optimistic.

In fact, sunsets over the past few years have clearly been used to hide the true budgetary costs of intended policies and to increase the underlying size of the annual tax cut, by allowing a larger annual tax cut to fit within a given multiyear budget total. Policymakers supporting sunsets have every intention of trying to make the policies permanent.[4] For example, House Speaker Dennis Hastert indicated just after the House passed the 2003 tax cut that "The $350 [billion] number takes us through the next two years, basically. . . . But also it could end up being a trillion-dollar bill, because this stuff is extendable. That's a fight we're going to have to have. It's not a bad fight to have."[5] Likewise, many proposals to extend part or all of EGTRRA have been introduced and at least one has been enacted (Evans 2003).

Using sunsets in this manner — to avoid the constraints imposed by the budget rules and raise the underlying annual size of a tax cut within a given multiyear budget total — is a serious problem. It pushes the

---

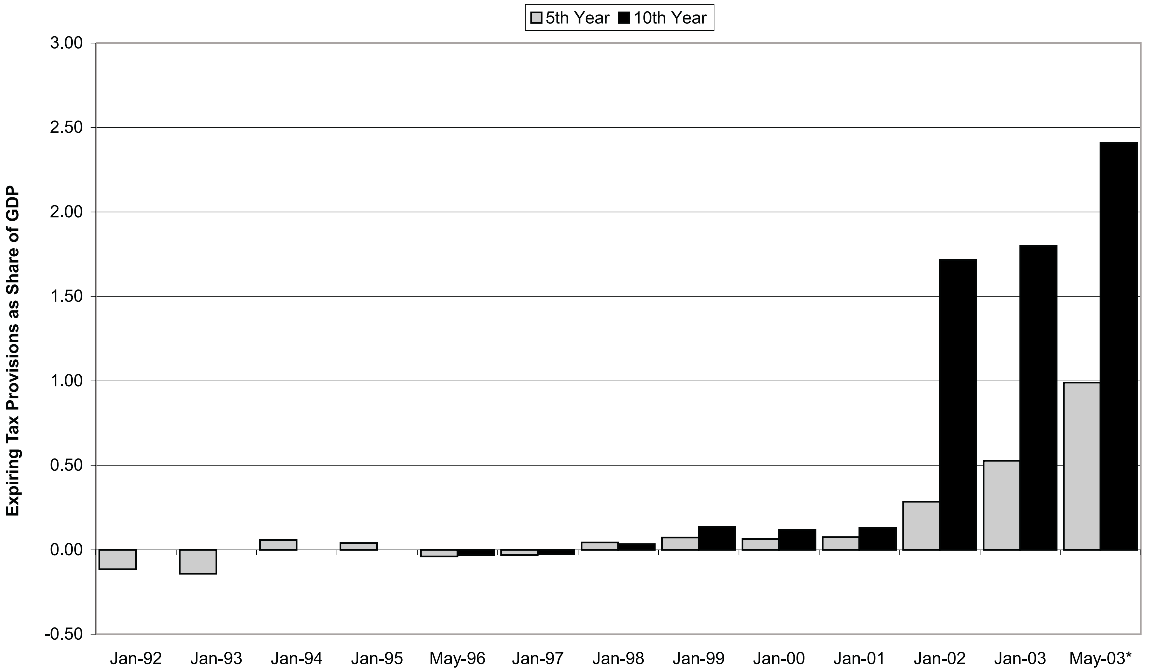
[2]Data in Gale and Potter (2002, table 5 and page 147) show that estate tax repeal would reduce expected taxes for households in the top 1 percent by more than $16,000 per year. Households with income above $1 million represent the top 0.2 percent of households.

[3]For example, a temporary investment incentive is likely to prove more effective in the short term than a permanent incentive, since it encourages firms to accelerate future investment into the present. The longer the "temporary" incentive is in place, however, the less credible this motivation appears and the more the sunset seems like an accounting gimmick intended to hide the longer-term cost of the provision. Moreover, removing the sunset in this case would be counterproductive, given the purpose of the original policy, and removing or extending the sunset in advance of its termination date would be particularly damaging to the original goal.

[4]Some policymakers argue that they were somehow forced into adopting the sunsets. After the vote on the conference agreement, for example, Senator Kay Bailey Hutchison, R-Texas, was quoted as saying, "The reason we have to sunset some of these taxes is because we had to fit within an artificial constraint of $350 billion" (Firestone 2003). These claims are disingenuous. In recent years, the president and Republican congressional leaders have chosen to push through tax cuts under the protection of the reconciliation rules. Reconciliation legislation cannot be subject to filibuster in the Senate and therefore requires only 51 votes to enact. The cost of undertaking this expedited procedure is that policy actions that lose revenue outside the budget window require 60 votes, assuming a point of order is raised against the legislation under the Byrd rule. But the sunset in the conference agreement occurs much earlier than would be required to satisfy the Byrd rule. The president and his allies in Congress could have chosen instead to legislate tax changes outside the reconciliation process, in which case the $350 billion cap would not have applied. Legislation outside the reconciliation process would be subject to filibuster, but requires only 51 votes even for a permanent tax cut. Put differently, tax cut advocates made a deliberate choice to use the reconciliation process to push through tax cuts with only a slim majority in support of them. (*See* Evans 2003 for further discussion of the Byrd rule and reconciliation.)

[5]"Hastert Salutes 'Trillion-Dollar' Tax Bill, Looks to Medicare Debate," *CongressDaily AM*, May 23, 2003.

Figure 2: Sunsets in the Tax Code, 1992-2003, % of GDP



* Estimates include JGTRRA.

nation farther down an already unsustainable fiscal path. It elevates expectations that the tax cuts will indeed be continued, even if they are ultimately unaffordable given the nation's long-term fiscal gap. It is gapingly hypocritical and poorly timed, given the purported crackdown on fraudulent corporate accounting practices. And the political need to extend popular tax breaks when they are due to sunset may provide cover to enact additional tax cuts of dubious merit.

A particularly cynical tendency among some policymakers over the past few years has been to use sunsets to increase the size of the annual tax cut that fits within the multiyear budget constraint, and then subsequently to argue that the sunset must be removed because it creates uncertainty in the tax code. Frequent changes in the tax code are indeed undesirable. The sunsets, however, are just the most obvious manifestation of the underlying uncertainty surrounding the tax code. The fundamental source of that uncertainty is the long-term fiscal gap facing the nation. (As an analogy, consider a family that leases an automobile that it could not afford to purchase because its expenses already exceed its income. The option to allow the lease to expire is similar to a sunset. Purchasing the automobile when the lease is over may resolve the uncertainty over the type of automobile the family will be driving, but it does not address the underlying financial uncertainty: The family's income is insufficient to finance its overall expenditures.)

Finally, it is worth noting that sunsets of tax provisions create a classic political economy asymmetry in which one (often relatively small) group has much to gain and each member of the general public has only a little to lose. Political economy theory predicts, and evidence confirms, that in such situations, the will of the active minority often dominates that of the passive majority. Historically, the sunset provisions fit this model well. Even now, with the massive increase in sunsets, the political model probably captures important future dynamics; after all, some of the most expensive provisions to extend — repeal of the estate tax, the reductions in the top marginal income tax rates, and the bonus depreciation provisions — benefit relatively narrow segments of the population who happen to be both extremely affluent and politically connected. More broadly, the political economy consequences of the massive increase in sunsets — including the implications for campaign contributions — have not yet been adequately considered.

D. Policy Responses

Permanently reestablishing the pay-as-you-go (PAYGO) rules, which require tax cuts or mandatory spending increases to be offset by other policy changes, would bolster the credibility of the existing sunsets. The PAYGO rules would require that any removal of sunsets would have to be paid for either with other tax hikes or with spending cuts. Since even the Bush ad-

Table 2: Remove Sunsets in EGTRRA and JGTRRA: Distribution of Income Tax Change by AGI Class, 2013[1]

AGI Class (thousands of 2002 dollars)[2]	Tax Units[3]			Percent Change in After-Tax Income[4]	Percent of Total Income Tax Change	Average Tax Change ($)	Average Income Tax Rate[5]	
	Number (thousands)	Percent of Total	Percent With Tax Cut				Current Law	Proposal
Less than 10	38,857	23.9	6.5	0.2	0.1	-9	-11.0	-11.2
10-20	25,780	15.9	88.1	2.3	3.8	-454	-2.7	-5.0
20-30	19,790	12.2	98.7	2.7	5.3	-821	5.8	3.3
30-40	15,076	9.3	99.5	2.4	4.8	-978	9.2	7.1
40-50	10,809	6.7	99.6	2.4	4.4	-1,248	11.0	8.9
50-75	18,806	11.6	99.7	3.0	12.9	-2,088	12.7	10.1
75-100	12,195	7.5	99.8	3.7	14.1	-3,539	14.8	11.6
100-200	15,291	9.4	99.9	2.8	20.3	-4,058	18.1	15.8
200-500	3,820	2.4	99.3	2.6	9.1	-7,251	24.5	22.6
500-1,000	589	0.4	99.5	5.9	7.1	-36,717	29.0	24.9
More than 1,000	301	0.2	99.6	6.9	17.9	-181,711	30.1	25.2
All	162,256	100.0	74.9	3.3	100.0	-1,881	16.7	14.0

Source: Urban-Brookings Tax Policy Center Microsimulation Model (version 0503-1).
[1]Calendar year. Baseline is current law. Includes removing sunsets for the following individual income tax provisions in EGTRRA, the Job Creation and Worker Assistance Act of 2002 and JGTRRA: marginal tax rate reductions; the 10-percent bracket; the child tax credit; the child and dependent care credit; the AMT exemption; the allowance of personal nonrefundable credits regardless of AMT liability; the personal exemption phaseout (PEP); the limitation on itemized deductions (Pease); the standard deduction, 15 percent bracket, and EITC expansion for married couples; tax rates on long-term capital gains and dividends (15 percent; zero percent for those in the 10 and 15 percent tax brackets). Excludes pension and IRA provisions, and phaseout of the estate tax.
[2]Tax units with negative AGI are excluded from the lowest income class but are included in the totals.
[3]Includes both filing and nonfiling units. Tax units that are dependents of other taxpayers are excluded from the analysis.
[4]After-tax income is AGI less individual income tax net of refundable credits.
[5]Average income tax, net of refundable credits, as a percentage of average AGI.

ministration, which has embraced the use of sunsets, favors reestablishing the PAYGO rules, policymakers should reestablish those rules in time to apply to all of the sunsets in the 2001, 2002, and 2003 tax cuts. (The 2008 budget resolution does include a PAYGO rule, but it is quite weak. It needs to be strengthened.)

Given the prominence of sunsets, it would also be helpful for CBO to present alternative baseline figures, with temporary tax provisions assumed to continue. As sunsets have come to dominate the tax code, the official projections have become increasingly divorced from reality. The official projections assume that Congress will extend expiring mandatory spending programs but that all temporary tax provisions (other than excise taxes dedicated to trust funds) expire as scheduled, even if Congress has repeatedly renewed them. Since the assumption that all the temporary provisions will expire is unrealistic, the official projections are increasingly biased as a guide to the underlying policy stance (Auerbach, Gale, Orszag, and Potter 2003).

A variety of other measures are also worth consideration. Aaron (2003) has suggested that the JCT estimate the revenue effects of tax bills as if all provisions were fully implemented within three years and as if they remained in effect for the rest of the 10-year budget window. This requirement could be waived for provisions intended to be temporary, but removal of the sunset could then be made to require 60 votes in the Senate.[6] Another possibility is that any temporary tax cut within a reconciliation bill would be subject to a 60-vote point of order in the Senate. In combination with the Byrd rule, this provision could effectively require 60 votes for any tax cut in reconciliation legislation.[7] Given the projected fiscal gap facing the nation, such a hurdle to further tax cuts may be warranted. A third possibility would be that removing a sunset in reconciliation legislation could be made subject to the Byrd rule. This would have the desirable feature that sunsets that were enacted specifically as a way of getting around the Byrd rule could not be removed without eventually confronting the 60-vote requirement of that rule. Each of these ideas is imperfect, but all of them suggest that it may be possible to enact rules that attenuate the potential for abusive sunsets. Ultimately, though, the only real constraint on budget gimmicks is policymakers' willingness not to stretch formal rules and common sense.

More fundamentally, the sunsets have now come to embody crucial questions about the fiscal direction of the nation. A few years ago, the extenders were almost

[6]Gale (2001) discusses related proposals.
[7]Evans (2003) describes the debate over whether the reconciliation process was ever intended to facilitate tax cuts.

a legislative afterthought. The tax cuts of the past three years, however, have made the expiring tax provisions one of the central long-term fiscal policy questions facing the nation.

References

Aaron, Henry J. 2003. "How to Restore Honest Tax Accounting," May. Brookings.

Auerbach, Alan, William Gale, Peter Orszag, and Samara Potter. 2003. "Budget Blues: The Fiscal Outlook and Options for Reform." In Henry Aaron, James Lindsay, and Pietro Nivola, *Agenda for the Nation*. Washington: Brookings Institution, forthcoming.

Evans, Michael W. 2003. "The Budget Process and the 'Sunset' Provision of the 2001 Tax Law," *Tax Notes,* Apr. 21, pp. 405-15.

Firestone, David. 2003. "With Tax Cut Bill Passed, Republicans Call for One More Goal," *The New York Times,* May 24.

Gale, William G. 2001. "Building a Better Budget," *American Outlook,* May / June.

Gale, William G. and Peter R. Orszag. 2003. "The Real Fiscal Danger," *Tax Notes,* Apr. 21, p. 429.

Gale, William G. and Samara R. Potter. 2002. "An Economic Evaluation of the Economic Growth and Tax Relief Reconciliation Act of 2001," *National Tax Journal*, March.

Greenstein, Robert, Richard Kogan, and Joel Friedman. 2003. "Conference Agreement on Tax Cuts Makes Heavier Use of Gimmicks Than House or Senate Bills." Center on Budget and Policy Priorities. May 22.

Joint Committee on Taxation. 2001. "Estimated Budget Effects of the Conference Agreement for H.R.: 1836[1]." JCX-51-01. May 26.

Joint Committee on Taxation. 2002. "Estimated Revenue Effects of the 'Job Creation and Worker Assistance Act of 2002.'" JCX-13-02. March 6.

Joint Committee on Taxation. 2003. "Estimated Budget Effects of the Conference Agreement for H.R. 2: The Jobs and Growth Tax Relief Reconciliation Act of 2003." JCX-55-03. May 22.

Maggs, John. 2003. "When Permanent Is Temporary," *National Journal*, May 10.

Murray, Alan. 2003. "Tax Break's 'Sunset' May Set the Stage for Fiscal Reckoning," *The Wall Street Journal,* May 20, p. A4.

Orszag, Peter R., Richard Kogan, and Robert Greenstein. 2003. "The Administration's Tax Cuts and the Long-Term Budget Outlook." Center on Budget and Policy Priorities. Revised March 19.

Appendix Table 1: Revenue Effect of Expiring Tax Provisions in the Tax Code

	In billions of dollars		In % of GDP	
Projection Year	**5th Year**	**10th Year**	**5th Year**	**10th Year**
Jan-92	-9.0		-0.11	
Jan-93	-11.2		-0.14	
Jan-94	5.0		0.06	
Jan-95	3.6		0.04	
May-96	-3.7	-3.7	-0.04	-0.03
Jan-97	-3.1	-3.4	-0.03	-0.03
Jan-98	4.5	4.4	0.04	0.03
Jan-99	7.9	18.4	0.07	0.14
Jan-00	7.6	17.7	0.06	0.12
Jan-01	9.9	22.0	0.07	0.13
Jan-02	38.3	297.1	0.28	1.72
Jan-03	72.7	321.0	0.53	1.80
May-03*	138.3	430.1	0.99	2.41

Includes tax provisions that expired recently before the projection.
* Estimates include JGTRRA.
Source: Authors' calculations based on Congressional Budget Office, Economic and Budget Outlook, various years.
Note: Negative figures indicate a net revenue gain; positive figures indicate a net revenue loss.

Appendix Table 2: Remove Sunsets in EGTRRA and JGTRRA: Distribution of Income Tax Change by Percentiles, 2013[1]

AGI Classs[2]	Percent of Tax Units With Tax Cut	Percent Change in After-Tax Income[3]	Percent of Total Income Tax Change	Average Tax Change ($)	Average Income Tax Rate[4]	
					Current Law	Proposal
Lowest Quintile	0.3	0.1	*	-3	-11.8	-12.0
Second Quintile	75.5	1.9	3.8	-353	-3.9	-5.9
Middle Quintile	99.0	2.6	9.2	-868	7.2	4.8
Fourth Quintile	99.7	2.8	18.1	-1,705	12.0	9.6
Next 10 Percent	99.9	3.6	19.1	-3,593	15.1	12.1
Next 5 Percent	99.9	2.9	10.8	-4,061	17.7	15.3
Next 4 Percent	99.7	2.3	10.4	-4,906	22.2	20.5
Top 1 Percent	99.0	6.0	28.5	-53,561	29.1	24.9
All	74.9	3.3	100.0	-1,881	16.7	14.0

Source: Urban-Brookings Tax Policy Center Microsimulation Model (version 0503-1).
* Less than 0.05 percent.
[1]Calendar year. Baseline is current law. Includes removing sunsets for the following individual income tax provisions in EGTRRA, the Job Creation and Worker Assistance Act of 2002, and JGTRRA: marginal tax rate reductions; the 10 percent bracket; the child tax credit; the child and dependent care credit; the AMT exemption; the allowance of personal nonrefundable credits regardless of AMT liability; the personal exemption phaseout (PEP); the limitation on itemized deductions (Pease); the standard deduction, 15 percent bracket, and EITC expansion for married couples; tax rates on long-term capital gains and dividends (15 percent; zero percent for those in the 10 and 15 percent tax brackets). Excludes pension and IRA provisions, and phaseout of the estate tax.
[2]Tax units with negative AGI are excluded from the lowest quintile but are included in the totals. Includes both filing and nonfiling units. Tax units that are dependents of other taxpayers are excluded from the analysis.
[3]After-tax income is AGI less individual income tax net of refundable credits.
[4]Average income tax, net of refundable credits, as a percentage of average AGI.