

111th CONGRESS
1st Session
H. R. 2023

To amend the Internal Revenue Code of 1986 to reform the estate and gift tax.

IN THE HOUSE OF REPRESENTATIVES

April 22, 2009

Mr. MCDERMOTT introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to reform the estate and gift tax.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Sensible Estate Tax Act of 2009'.

SEC. 2. RESTORATION OF ESTATE TAX; REPEAL OF CARRYOVER BASIS.

(a) In General- The following provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, and the amendments made by such provisions, are hereby repealed:

- (1) Subtitles A and E of title V.
- (2) Subsection (d), and so much of subsection (f)(3) as relates to subsection (d), of section 511.
- (3) Paragraph (2) of subsection (b), and paragraph (2) of subsection (e), of section 521.

The Internal Revenue Code of 1986 shall be applied as if such provisions and amendments had never been enacted.

(b) Sunset Not To Apply-

- (1) Subsection (a) of section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended by striking `this Act' and all that follows and inserting `this Act (other than title V) shall not apply to taxable, plan, or limitation years beginning after December 31, 2010.'.
- (2) Subsection (b) of such section 901 is amended by striking `, estates, gifts, and transfers'.

SEC. 3. UNIFIED CREDIT AGAINST THE ESTATE TAX.

(a) In General- Subsection (c) of section 2010 of the Internal Revenue Code of 1986 (relating to applicable credit amount) is amended by striking all that follows 'the applicable exclusion amount' and inserting '. For purposes of the preceding sentence, the applicable exclusion amount is \$2,000,000.'

(b) Inflation Adjustment- Subsection (c) of section 2010 of such Code, as amended by subsection (a), is amended--

(1) by striking 'For purposes of this section,' and inserting the following:

(1) IN GENERAL- For purposes of this section,' and

(2) by adding at the end the following new paragraph:

(2) INFLATION ADJUSTMENT- In the case of any decedent dying in a calendar year after 2010, the \$2,000,000 amount in paragraph (1) shall be increased by an amount equal to--

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting '2009' for '1992' in subparagraph (B) thereof.

If any increase determined under the preceding sentence is not a multiple of \$10,000, such increase shall be rounded to the nearest multiple of \$10,000.'

(c) Effective Date- The amendments made by this section shall apply to estates of decedents dying, and gifts made, after December 31, 2009.

SEC. 4. RATES OF TAX.

(a) In General- The table in paragraph (1) of section 2001(c) of the Internal Revenue Code of 1986 (relating to rate schedule) is amended by striking the last 3 rows and inserting the following:

Over \$1,500,000 but not over \$5,000,000

\$555,800, plus 45 percent of the excess of such amount over \$1,500,000.

Over \$5,000,000 but not over \$10,000,000

\$2,130,800, plus 50 percent of the excess of such amount over \$5,000,000.

Over \$10,000,000

\$4,630,800, plus 55 percent of the excess of such amount over \$10,000,000.'

(b) Adjustment for Inflation- Paragraph (2) of section 2001(c) of such Code is amended to read as follows:

 ` (2) INFLATION ADJUSTMENT- In the case of any decedent dying in a calendar year after 2010--

 ` (A) each minimum and maximum dollar amount for each rate bracket in the table in paragraph (1) shall be increased by an amount equal to--

 ` (i) such dollar amount, multiplied by

 ` (ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting `2009' for `1992' in subparagraph (B) thereof, and

 ` (B) each of the amounts setting forth the tax under such table shall be adjusted to the extent necessary to reflect the adjustments in the rate brackets made by subparagraph (A).

 If any increase determined under subparagraph (A) is not a multiple of \$10,000, such increase shall be rounded to the nearest multiple of \$10,000.'

(c) Effective Date- The amendment made by subsection (a) shall apply to estates of decedents dying, and gifts made, after December 31, 2009.

SEC. 5. RESTORATION OF CREDIT FOR STATE DEATH TAX.

(a) In General- Section 2011 of the Internal Revenue Code of 1986 (relating to credit for State death taxes) is amended by striking subsection (f).

(b) Repeal of Deduction for State Death Taxes-

 (1) IN GENERAL- Section 2058 of such Code (relating to State death taxes) is amended by adding at the end the following:

 ` (c) Termination- This section shall not apply to the estates of decedents dying after December 31, 2009.'

 (2) CONFORMING AMENDMENT- Section 2106(a)(4) of such Code is amended by adding at the end the following new sentence: `This paragraph shall not apply to the estates of decedents dying after December 31, 2009.'

(c) Effective Date- The amendment made by subsection (a) shall apply to estates of decedents dying, and gifts made, after December 31, 2008.

SEC. 6. RESTORATION OF UNIFIED CREDIT AGAINST GIFT TAX.

(a) In General- Paragraph (1) of section 2505(a) of the Internal Revenue Code of 1986 (relating to general rule for unified credit against gift tax) is amended by striking `(determined as if the applicable exclusion amount were \$1,000,000)'

(b) Effective Date- The amendments made by this section shall apply to estates of decedents dying, generation-skipping transfers, and gifts made, after December 31, 2009.

SEC. 7. UNIFIED CREDIT INCREASED BY UNUSED UNIFIED CREDIT OF DECEASED SPOUSE.

(a) In General- Section 2010 of the Internal Revenue Code of 1986, as amended by section 2, is amended--

(1) by striking the last sentence of paragraph (1),

(2) by striking paragraph (2), and

(3) by inserting after paragraph (1) the following new paragraph:

`(2) APPLICABLE EXCLUSION AMOUNT- For purposes of paragraph (1)--

`(A) IN GENERAL- The applicable exclusion amount is the sum of--

`(i) the basic exclusion amount, and

`(ii) in the case of a surviving spouse, the aggregate deceased spousal unused exclusion amount.

`(B) BASIC EXCLUSION AMOUNT-

`(i) IN GENERAL- For purposes of subparagraph (A), the basic exclusion amount is \$2,000,000.

`(ii) INFLATION ADJUSTMENT- In the case of any decedent dying in a calendar year after 2010, the \$2,000,000 amount in clause (i) shall be increased by an amount equal to--

`(I) such dollar amount, multiplied by

`(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting `calendar year 2009' for `calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of \$100,000, such amount shall be rounded to the nearest multiple of \$100,000.

`(C) AGGREGATE DECEASED SPOUSAL UNUSED EXCLUSION AMOUNT- For purposes of this subsection--

`(i) AGGREGATE DECEASED SPOUSAL UNUSED EXCLUSION AMOUNT- The term `aggregate deceased spousal unused exclusion amount' means the lesser of--

`(I) the basic exclusion amount, or

`(II) the sum of the deceased spousal unused exclusion amounts of the surviving spouse.

`(ii) DECEASED SPOUSAL UNUSED EXCLUSION AMOUNT- For purposes of subsection (A), the term `deceased spousal unused exclusion amount' means, with respect to the surviving spouse of any deceased spouse dying after December 31, 2009, the excess (if any) of--

`(I) the applicable exclusion amount of the deceased spouse, over

`(II) the amount with respect to which the tentative tax is determined under section 2001(b)(1) on the estate of such deceased spouse.

`(iii) SPECIAL RULES-

`(I) ELECTION REQUIRED- A deceased spousal unused exclusion amount may not be taken into account by a surviving spouse under this paragraph unless the executor of the estate of the deceased spouse files an estate tax return on which such amount is computed and makes an election on such return that such amount may be so taken into account. Such election, once made, shall be irrevocable. No election may be made under this clause if such return is filed after the time prescribed by law (including extensions) for filing such return.

`(II) EXAMINATION OF PRIOR RETURNS AFTER EXPIRATION OF PERIOD OF LIMITATIONS WITH RESPECT TO DECEASED SPOUSAL UNUSED EXCLUSION AMOUNT- Notwithstanding any period of limitation in section 6501, after the time has expired under section 6501 within which a tax may be assessed under chapter 11 or 12 with respect to a deceased spousal unused exclusion amount, the Secretary may examine a return of the deceased spouse to make determinations with respect to such amount for purposes of carrying out this subsection.

`(D) REGULATIONS- The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this subsection.'

(b) Conforming Amendments-

(1) Paragraph (1) of section 2505(a) of such Code, as amended by section 5, is amended to read as follows:

`(1) the applicable credit amount under section 2010(c) which would apply if the donor died as of the end of the calendar year, reduced by'

(2) Section 2631(c) of such Code is amended by striking `the applicable exclusion amount' and inserting `the basic exclusion amount'.

(3) Section 6018(a)(1) of such Code is amended by striking `applicable exclusion amount' and inserting `basic exclusion amount'.

(c) Effective Date- The amendments made by this section shall apply to estates of decedents dying, generation-skipping transfers, and gifts made, after December 31, 2009.