

111TH CONGRESS
1ST SESSION
S. 722

To amend the Internal Revenue Code of 1986 to provide for permanent alternative minimum tax relief, middle class tax relief, and estate tax relief, and to permanently extend certain expiring provisions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. BAUCUS (for himself, Mr. ROCKEFELLER, and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend the Internal Revenue Code of 1986 to provide for permanent alternative minimum tax relief, middle class tax relief, and estate tax relief, and to permanently extend certain expiring provisions, and for other purposes.

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

SECTION 1. SHORT TITLE, ETC.

(a) **SHORT TITLE.**—This Act may be cited as the “Taxpayer Certainty and Relief Act of 2009”.

(b) **AMENDMENT OF 1986 CODE.**—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows: Sec. 1. Short title, etc.

TITLE I—PERMANENT ALTERNATIVE MINIMUM TAX RELIEF

Sec. 101. Exemption amounts made permanent.

Sec. 102. Exemption amounts indexed for inflation.

Sec. 103. Alternative minimum tax relief for nonrefundable credits.

TITLE II—PERMANENT MIDDLE CLASS TAX RELIEF

Sec. 201. Permanent reduction in tax rates for lower-income and middle-income individuals.

Sec. 202. Permanent reduction in rates on capital gains for lower-income and middle-income taxpayers.

Sec. 203. Modifications to child tax credit.

Sec. 204. Repeal of sunset on marriage penalty relief.

Sec. 205. Repeal of sunset on expansion of dependent care credit.

Sec. 206. Repeal of sunset on expansion of adoption credit and adoption assistance programs.

Sec. 207. Expansion of earned income tax credit.

TITLE III—PERMANENT ESTATE TAX RELIEF

Sec. 301. Permanent extension of estate tax as in effect in 2009.

Sec. 302. Unified credit increased by unused unified credit of deceased spouse.

**TITLE I—PERMANENT ALTERNATIVE MINIMUM TAX RELIEF SEC. 101.
EXEMPTION AMOUNTS MADE PERMANENT.**

(a) IN GENERAL.—Paragraph (1) of section 55(d) is amended—

(1) by striking “\$45,000 (\$70,950 in the case of taxable years beginning in 2009)” in subparagraph (A) and inserting “\$70,950 in the case of”,

(2) by striking “\$33,750 (\$46,700 in the case of taxable years beginning in 2009)” in subparagraph (B) and inserting “\$46,700 in the case of an individual who”, and

(3) by striking “paragraph (1)(A)” in subparagraph (C) and inserting “subparagraph (A)”.

(b) REPEAL OF EGTRRA SUNSET.—Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 (relating to sunset of provisions of such Act) shall not apply to section 701 of such Act (relating to increase in alternative minimum tax exemption).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 102. EXEMPTION AMOUNTS INDEXED FOR INFLATION.

(a) IN GENERAL.—Subsection (d) of section 55 is amended by adding at the end the following new paragraph:

“(4) INFLATION ADJUSTMENT.—

“(A) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2009, each of the dollar amounts contained in subsection (b)(1)(A)(i) and paragraphs (1)(A), (1)(B), (1)(D), (3)(A), and (3)(B) of this subsection 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 the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2008’ for ‘calendar year 1992’ in subparagraph (B) thereof.

“(B) ROUNDING.—Any increase determined under subparagraph (A) shall be rounded to the nearest multiple of \$100.”.

(b) CONFORMING AMENDMENTS.—

(1) Clause (iii) of section 55(b)(1)(A) is amended by striking “by substituting” and all that follows through “appears.” and inserting “by substituting 50 percent of the dollar amount otherwise applicable under subclause (I) and subclause (II) thereof”.

(2) Paragraph (3) of section 55(d) is amended—

(A) by striking “or (2)” in subparagraph (A) ,

(B) by striking “and” at the end of subparagraph (B), and

(C) by striking subparagraph (C) and inserting the following new subparagraphs:

“(C) 50 percent of the dollar amount applicable under subparagraph (A) in the case of a taxpayer described in subparagraph (C) or

(D) of paragraph (1), and

“(D) \$150,000 in the case of a taxpayer described in paragraph (2).”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 103. ALTERNATIVE MINIMUM TAX RELIEF FOR NONREFUNDABLE CREDITS.

(a) **IN GENERAL.**—Subsection (a) of section 26 is amended to read as follows:

“(a) **LIMITATION BASED ON AMOUNT OF TAX.**—The aggregate amount of credits allowed by this subpart for the taxable year shall not exceed the sum of—

“(1) the taxpayer's regular tax liability for the taxable year reduced by the foreign tax credit allowable under section 27(a), and

“(2) the tax imposed by section 55(a) for the taxable year.”.

(b) **CONFORMING AMENDMENTS.**—

(1) **ADOPTION CREDIT.**—

(A) Section 23(b) is amended by striking paragraph (4).

(B) Section 23(c) is amended by striking paragraphs (1) and (2) and inserting the following:

“(1) **IN GENERAL.**—If the credit allowable under subsection (a) for any taxable year exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 25D and 1400C), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.”.

(C) Section 23(c) is amended by redesignating paragraph (3) as paragraph (2).

(2) **CHILD TAX CREDIT.**—

(A) Section 24(b) is amended by striking paragraph (3).

(B) Section 24(d)(1) is amended—

(i) by striking “section 26(a)(2) or subsection (b)(3), as the case may be,” each place it appears in subparagraphs (A) and (B) and inserting “section 26(a)”, and

(ii) by striking “section 26(a)(2) or subsection (b)(3), as the case may be” in the second last sentence and inserting “section 26(a)”.

(3) **CREDIT FOR INTEREST ON CERTAIN HOME MORTGAGES.**—Section 25(e)(1)(C) is amended to read as follows:

“(C) **APPLICABLE TAX LIMIT.**—For purposes of this paragraph, the term ‘applicable tax limit’ means the limitation imposed by section 26(a) for the taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 23, 25D, and 1400C).”.

(4) **SAVERS’ CREDIT.**—Section 25B is amended by striking subsection (g).

(5) **RESIDENTIAL ENERGY EFFICIENT PROPERTY.**—Section 25D(c) is amended to read as follows:

“(c) **CARRYFORWARD OF UNUSED CREDIT.**—If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.”.

(6) CERTAIN PLUG-IN ELECTRIC VEHICLES.— Section 30(c)(2) is amended to read as follows:

“(2) PERSONAL CREDIT.—For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.”.

(7) ALTERNATIVE MOTOR VEHICLE CREDIT.— Section 30B(g)(2) is amended to read as follows:

“(2) PERSONAL CREDIT.—For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.”.

(8) NEW QUALIFIED PLUG-IN ELECTRIC VEHICLE CREDIT.—Section 30D(c)(2) is amended to read as follows:

“(2) PERSONAL CREDIT.—For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.”.

(9) CROSS REFERENCES.—Section 55(c)(3) is amended by striking “26(a), 30C(d)(2),” and inserting “30C(d)(2)”.

(10) FOREIGN TAX CREDIT.—Section 904 is amended by striking subsection (i) and by redesignating subsections (j) , (k), and (l) as subsections (i), (j), and (k), respectively.

(11) FIRST-TIME HOME BUYER CREDIT FOR THE DISTRICT OF COLUMBIA.— Section 1400C(d) is amended to read as follows:

“(d) CARRYFORWARD OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under subpart A of part IV of subchapter A (other than this section and section 25D), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

TITLE II—PERMANENT MIDDLE CLASS TAX RELIEF

SEC. 201. PERMANENT REDUCTION IN TAX RATES FOR LOWER-INCOME AND MIDDLE-INCOME INDIVIDUALS.

(a) IN GENERAL.—Paragraph (2) of section 1(i) is amended to read as follows:

“(2) REDUCTION IN RATES.—The tables under subsections (a), (b), (c), (d), and (e) shall be applied—

“(A) in the case of taxable years beginning after 2008—
“(i) by substituting ‘25%’ for ‘28%’ each place it appears (before the application of clause (ii)), and
“(ii) by substituting ‘28%’ for ‘31%’ each place it appears, and
“(B) in the case of taxable years beginning in 2009 and 2010—
“(i) by substituting ‘33%’ for ‘36%’ each place it appears, and
“(ii) by substituting ‘35%’ for ‘39.6%’ each place it appears.”.

(b) REPEAL OF EGTRRA SUNSET.—Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 (relating to sunset of provisions of such Act) shall not apply to section 101 of such Act (relating to reduction in income tax rates for individuals).

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2008.

SEC. 202. PERMANENT REDUCTION IN RATES ON CAPITAL GAINS FOR LOWER-INCOME AND MIDDLE-INCOME TAXPAYERS.

(a) IN GENERAL.—

(1) REGULAR TAX.—Section 1(h)(1) is amended by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively, and by striking subparagraph (C) and inserting the following: “(C) 15 percent of the lesser of—

“(i) so much of the adjusted net capital gain (or, if less, taxable income) as exceeds the amount on which a tax is determined under subparagraph (B), or ”(ii) the excess (if any) of—

“(I) amount of taxable income which would (without regard to this paragraph) be taxed at a rate below the second highest tax rate, over

“(II) the greater of the amounts determined under clauses (i) and (ii) of subparagraph (B);

“(D) 20 percent of the adjusted net capital gain (or, if less, taxable income) in excess of the sum of the amounts on which tax is determined under subparagraphs (B) and (C);”.

(2) MINIMUM TAX.—Section 55(b)(3) is amended by redesignating subparagraph (D) as subparagraphs (E) and by striking subparagraph (C) and inserting the following: “(C) 15 percent of the lesser of—

“(i) so much of the adjusted net capital gain (or, if less, taxable excess) as exceeds the amount on which tax is determined under subparagraph (B), or

“(ii) the excess described in section 1(h)(1)(C)(ii), plus

“(D) 20 percent of the adjusted net capital gain (or, if less, taxable excess) in excess of the sum of the amounts on which tax is determined under subparagraphs (B) and (C), plus”.

(3) CONFORMING AMENDMENTS.—

(A) The following sections are each amended by striking “15 percent” and inserting “20 percent”:

(i) Section 1445(e)(1).

(ii) The second sentence of section 7518(g)(6)(A).

(iii) Section 53511(f)(2) of title 46, United States Code.

(B) Section 1(h)(1)(B) is amended by striking “5 percent (0 percent in the case of taxable years beginning after 2007)” and inserting “0 percent”.

(C) Section 55(b)(3)(B) is amended by striking “5 percent (0 percent in the case of taxable years beginning after 2007)” and inserting “0 percent”.

(D) Section 1445(e)(6) is amended by striking “15 percent (20 percent in the case of taxable years beginning after December 31, 2010)” and inserting “20 percent”.

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2010.

(2) WITHHOLDING.—The amendment made by subsection (a)(3)(A)(i) shall apply to amounts paid on or after January 1, 2011.

(c) REPEAL OF JGTRRA SUNSET.—Section 303 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 is repealed.

SEC. 203. MODIFICATIONS TO CHILD TAX CREDIT.

(a) REPEAL OF EGTRRA SUNSET.—Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 (relating to sunset of provisions of such Act) shall not apply to sections 201 (relating to modifications to child tax credit) and 203 (relating to refunds disregarded in the administration of federal programs and federally assisted programs) of such Act.

(b) MODIFICATION OF THRESHOLD AMOUNT.—

(1) IN GENERAL.—Clause (i) of section 24(d)(1)(B) is amended by striking “\$10,000” and inserting “\$3,000”.

(2) REPEAL OF INFLATION ADJUSTMENT TO EARNED INCOME BASE.—Subsection (d) of section 24 (relating to portion of credit refundable) is amended by striking paragraph (3).

(3) CONFORMING AMENDMENT.—Section 24(d) is amended by striking paragraph (4).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2010.

SEC. 204. REPEAL OF SUNSET ON MARRIAGE PENALTY RELIEF.

Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 (relating to sunset of provisions of such Act) shall not apply to sections 301, 302, and 303(a) of such Act (relating to marriage penalty relief).

SEC. 205. REPEAL OF SUNSET ON EXPANSION OF DEPENDENT CARE CREDIT.

Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 (relating to sunset of provisions of such Act) shall not apply to section 204 of such Act (relating to dependent care credit).

SEC. 206. REPEAL OF SUNSET ON EXPANSION OF ADOPTION CREDIT AND ADOPTION ASSISTANCE PROGRAMS.

Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 (relating to sunset of provisions of such Act) shall not apply to section 202 of such Act (relating to expansion of adoption credit and adoption assistance programs).

SEC. 207. EXPANSION OF EARNED INCOME TAX CREDIT.

(a) REPEAL OF EGTRRA SUNSET.—Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 (relating to sunset of provisions of such Act) shall not apply to subsections (b) through (h) of section 303 of such Act (relating to earned income tax credit).

(b) INCREASE IN CREDIT PERCENTAGE FOR FAMILIES WITH 3 OR MORE CHILDREN.—Paragraph (1) of section 32(b) is amended by striking subparagraphs (B) and (C) and inserting the following new subparagraph:

“(B) INCREASED CREDIT PERCENTAGE FOR FAMILIES WITH 3 OR MORE QUALIFYING CHILDREN.—In the case of an eligible individual with 3 or more qualifying children, the table in subparagraph (A) shall be applied by substituting ‘45’ for ‘40’ in the second column thereof.”

(c) JOINT RETURNS.—

(1) IN GENERAL.—Subparagraph (B) of section 32(b)(2) is amended by striking “increased by” and all that follows and inserting “increased by \$5,000.”

(2) INFLATION ADJUSTMENTS.—Clause (ii) of section 32(j)(1)(B) is amended—
(A) by striking “\$3,000” and inserting “\$5,000”, and

(B) by striking “calendar year 2007” and inserting “calendar year 2008”.

(d) CONFORMING AMENDMENT.—Section 32(b) is amended by striking paragraph (3).

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

TITLE III—PERMANENT ESTATE TAX RELIEF

SEC. 301. PERMANENT EXTENSION OF ESTATE TAX AS IN EFFECT IN 2009.

(a) RESTORATION OF UNIFIED CREDIT AGAINST GIFT TAX.—Paragraph (1) of section 2505(a) (relating to general rule for unified credit against gift tax), after the application of subsection (g), is amended by striking “(determined as if the applicable exclusion amount were \$1,000,000)”.

(b) EXCLUSION EQUIVALENT OF UNIFIED CREDIT EQUAL TO \$3,500,000.— Subsection (c) of section 2010 (relating to unified credit against estate tax) is amended to read as follows: “(c) APPLICABLE CREDIT AMOUNT.—

“(1) IN GENERAL.—For purposes of this section, the applicable credit amount is the amount of the tentative tax which would be determined under section 2001(c) if the amount with respect to which such tentative tax is to be computed were equal to the applicable exclusion amount.

“(2) APPLICABLE EXCLUSION AMOUNT.—”(A) IN GENERAL.—For purposes of this subsection, the applicable exclusion amount is \$3,500,000.

“(B) INFLATION ADJUSTMENT.—In the case of any decedent dying in a calendar year after 2010, the dollar amount in subparagraph (A) 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 \$10,000, such amount shall be rounded to the nearest multiple of \$10,000.”.

(c) MAXIMUM ESTATE TAX RATE EQUAL TO 45 PERCENT.—

(1) IN GENERAL.—Subsection (c) of section 2001 (relating to imposition and rate of tax) is amended—

(A) by striking “but not over \$2,000,000” in the table contained in paragraph (1),

(B) by striking the last 2 items in such table,

(C) by striking “(1) IN GENERAL.—”, and

(D) by striking paragraph (2).

(2) CONFORMING AMENDMENT.—Paragraphs (1) and (2) of section 2102(b) are amended to read as follows:

“(1) IN GENERAL.—A credit in an amount that would be determined under section 2010 as the applicable credit amount if the applicable exclusion amount were \$60,000 shall be allowed against the tax imposed by section 2101.

“(2) RESIDENTS OF POSSESSIONS OF THE UNITED STATES.—In the case of a decedent who is considered to be a ‘nonresident not a citizen of the United States’ under section 2209, the credit allowed under this subsection shall not be less than the proportion of the amount that would be determined under section 2010 as the applicable credit amount if the applicable exclusion amount were \$175,000 which the value of that part of the decedent's gross estate which at the time of the decedent's death is situated in the United States bears to the value of the decedent's entire gross estate, wherever situated.”.

(d) MODIFICATIONS OF ESTATE AND GIFT TAXES TO REFLECT DIFFERENCES IN UNIFIED CREDIT RESULTING FROM DIFFERENT TAX RATES.—

(1) ESTATE TAX.—

(A) IN GENERAL.—Section 2001(b)(2) (relating to computation of tax) is amended by striking “if the provisions of subsection (c) (as in effect at the decedent's death)” and inserting “if the modifications described in subsection (g)”.

(B) MODIFICATIONS.—Section 2001 is amended by adding at the end the following new subsection:

“(g) MODIFICATIONS TO GIFT TAX PAYABLE TO REFLECT DIFFERENT TAX RATES.—For purposes of applying subsection (b)(2) with respect to 1 or more gifts, the rates of tax under subsection (c) in effect at the decedent's death shall, in lieu of the rates of tax in effect at the time of such gifts, be used both to compute—

“(1) the tax imposed by chapter 12 with respect to such gifts, and

“(2) the credit allowed against such tax under section 2505, including in computing—

“(A) the applicable credit amount under section 2505(a)(1), and

“(B) the sum of the amounts allowed as a credit for all preceding periods under section 2505(a)(2).

For purposes of paragraph (2)(A), the applicable credit amount for any calendar year before 1998 is the amount which would be determined under section 2010(c) if the applicable exclusion amount were the dollar amount under section 6018(a)(1) for such year.”.

(2) GIFT TAX.—Section 2505(a) (relating to unified credit against gift tax) is amended by adding at the end the following new flush sentence: “For purposes of applying paragraph (2) for any calendar year, the rates of tax in effect under section 2502(a)(2) for such calendar year shall, in lieu of the rates of tax in effect for preceding calendar periods, be used in determining the amounts allowable as a credit under this section for all preceding calendar periods.”.

(e) INCREASE IN AGGREGATE REDUCTION IN FAIR MARKET VALUE ALLOWED UNDER SPECIAL USE VALUATION.—Section 2032A(a) (relating to value based on use under which property qualifies) is amended—

(1) by striking “\$750,000” in paragraph (2) and inserting “\$3,500,000,

(2) by striking “1998” in paragraph (3) and inserting “2010”,

(3) by striking “\$750,000” in paragraph (3) and inserting “\$3,500,000”, and

(4) by striking “1997” in paragraph (3) and inserting “2009”.

(f) 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.

(g) ADDITIONAL MODIFICATIONS TO ESTATE TAX.—

(1) 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:

(A) Subtitles A and E of title V.

(B) Subsection (d), and so much of subsection (f)(3) as relates to subsection (d), of section 511.

(C) 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.

(2) SUNSET NOT TO APPLY TO TITLE V OF EGTRRA.—Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall not apply to title V of such Act.

(3) REPEAL OF DEADWOOD.—

(A) Sections 2011, 2057, and 2604 are hereby repealed.

(B) The table of sections for part II of subchapter A of chapter 11 is amended by striking the item relating to section 2011.

(C) The table of sections for part IV of subchapter A of chapter 11 is amended by striking the item relating to section 2057.

(D) The table of sections for subchapter A of chapter 13 is amended by striking the item relating to section 2604.

SEC. 302. UNIFIED CREDIT INCREASED BY UNUSED UNIFIED CREDIT OF DECEASED SPOUSE.

(a) IN GENERAL.—Section 2010(c), as amended by section 301(b), is amended by striking paragraph (2) and inserting the following new paragraphs:

“(2) APPLICABLE EXCLUSION AMOUNT.—For purposes of this subsection, the applicable exclusion amount is the sum of— ”(A) the basic exclusion amount, and “(B) in the case of a surviving spouse, the aggregate deceased spousal unused exclusion amount.”(3) BASIC EXCLUSION AMOUNT.—

“(A) IN GENERAL.—For purposes of this subsection, the basic exclusion amount is \$3,500,000.

“(B) INFLATION ADJUSTMENT.—In the case of any decedent dying in a calendar year after 2010, the dollar amount in subparagraph (A) 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 \$10,000, such amount shall be rounded to the nearest multiple of \$10,000.

“(4) AGGREGATE DECEASED SPOUSAL UNUSED EXCLUSION AMOUNT.—For purposes of this subsection, the term ‘aggregate deceased spousal unused exclusion amount’ means the lesser of— ”(A) the basic exclusion amount, or

“(B) the sum of the deceased spousal unused exclusion amounts computed with respect to each deceased spouse of the surviving spouse.”(5) DECEASED SPOUSAL UNUSED EXCLUSION AMOUNT.—For purposes of this subsection, 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—

“(A) the basic exclusion amount of the deceased spouse, over

“(B) the amount with respect to which the tentative tax is determined under section 2001(b)(1) on the estate of such deceased spouse.”(6) SPECIAL RULES.—

“(A) ELECTION REQUIRED.—A deceased spousal unused exclusion amount may not be taken into account by a surviving spouse under paragraph (5) 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 subparagraph if such return is filed after the time prescribed by law (including extensions) for filing such return.

“(B) 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.

“(7) 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), as amended by section 301(a), is amended to read as follows:

“(1) the applicable credit amount in effect 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) is amended by striking “the applicable exclusion amount” and inserting “the basic exclusion amount”.

(3) Section 6018(a)(1) 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.