

109TH CONGRESS
2D SESSION

H. R. 5638

To amend the Internal Revenue Code of 1986 to increase the unified credit against the estate tax to an exclusion equivalent of \$5,000,000 and to repeal the sunset provision for the estate and generation-skipping taxes, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 2006

Mr. THOMAS (for himself, Mr. HULSHOF, and Mr. CRAMER) 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 increase the unified credit against the estate tax to an exclusion equivalent of \$5,000,000 and to repeal the sunset provision for the estate and generation-skipping taxes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Permanent Estate Tax
5 Relief Act of 2006”.

1 **SEC. 2. REFORM AND EXTENSION OF ESTATE TAX AFTER**
2 **2009.**

3 (a) RESTORATION OF UNIFIED CREDIT AGAINST
4 GIFT TAX.—Paragraph (1) of section 2505(a) of the In-
5 ternal Revenue Code of 1986 (relating to general rule for
6 unified credit against gift tax), after the application of
7 subsection (g), is amended by striking “(determined as if
8 the applicable exclusion amount were \$1,000,000)”.

9 (b) EXCLUSION EQUIVALENT OF UNIFIED CREDIT
10 EQUAL TO \$5,000,000.—Subsection (c) of section 2010
11 of such Code (relating to unified credit against estate tax)
12 is amended to read as follows:

13 “(c) APPLICABLE CREDIT AMOUNT.—

14 “(1) IN GENERAL.—For purposes of this sec-
15 tion, the applicable credit amount is the amount of
16 the tentative tax which would be determined under
17 the rate schedule set forth in section 2001(c) if the
18 amount with respect to which such tentative tax is
19 to be computed were the applicable exclusion
20 amount.

21 “(2) APPLICABLE EXCLUSION AMOUNT.—For
22 purposes of this subsection, the applicable exclusion
23 amount is \$5,000,000.”.

24 (c) RATE SCHEDULE.—

1 (1) IN GENERAL.—Subsection (c) of section
2 2001 of such Code (relating to rate schedule) is
3 amended to read as follows:

4 “(c) RATE SCHEDULE.—The tentative tax is equal
5 to the sum of—

6 “(1) the product of the rate specified in section
7 1(h)(1)(C) in effect on the date of the decedent’s
8 death multiplied by so much of the sum described in
9 subsection (b)(1) as does not exceed \$25,000,000,
10 and

11 “(2) the product of twice the rate specified in
12 section 1(h)(1)(C) in effect on the date of the de-
13 cedent’s death multiplied by so much of the sum de-
14 scribed in subsection (b)(1) as equals or exceeds
15 \$25,000,000.”.

16 (2) CONFORMING AMENDMENT.—Section
17 2502(a) of such Code (relating computation of tax),
18 after the application of subsection (g), is amended
19 by adding at the end the following flush sentence:

20 “In computing the tentative tax under section 2001(c) for
21 purposes of this subsection, ‘the last day of the calendar
22 year in which the gift was made’ shall be substituted for
23 ‘the date of the decedent’s death’ each place it appears
24 in such section.”.

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

4 (1) ESTATE TAX.—

5 (A) IN GENERAL.—Section 2001(b)(2) of
6 such Code (relating to computation of tax) is
7 amended by striking “if the provisions of sub-
8 section (c) (as in effect at the decedent’s
9 death)” and inserting “if the modifications de-
10 scribed in subsection (g)”.

11 (B) MODIFICATIONS.—Section 2001 of
12 such Code is amended by adding at the end the
13 following new subsection:

14 “(g) MODIFICATIONS TO GIFT TAX PAYABLE TO RE-
15 FLECT DIFFERENT TAX RATES.—For purposes of apply-
16 ing subsection (b)(2) with respect to 1 or more gifts, the
17 rates of tax under subsection (c) in effect at the decedent’s
18 death shall, in lieu of the rates of tax in effect at the time
19 of such gifts, be used both to compute—

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

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

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

1 “(B) the sum of the amounts allowed as a
2 credit for all preceding periods under section
3 2505(a)(2).

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

10 (2) GIFT TAX.—Section 2505(a) of such Code
11 (relating to unified credit against gift tax), after the
12 application of subsection (g), is amended by adding
13 at the end the following new flush sentence:

14 “For purposes of applying paragraph (2) for any calendar
15 year, the rates of tax used in computing the tax under
16 section 2502(a)(2) for such calendar year shall, in lieu of
17 the rates of tax in effect for preceding calendar periods,
18 be used in determining the amounts allowable as a credit
19 under this section for all preceding calendar periods.”.

20 (e) REPEAL OF DEDUCTION FOR STATE DEATH
21 TAXES.—

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

1 “(c) TERMINATION.—This section shall not apply to
2 the estates of decedents dying after December 31, 2009.”.

3 (2) CONFORMING AMENDMENT.—Section
4 2106(a)(4) of such Code is amended by adding at
5 the end the following new sentence: “This paragraph
6 shall not apply to the estates of decedents dying
7 after December 31, 2009.”.

8 (f) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to estates of decedents dying, gen-
10 eration-skipping transfers, and gifts made, after Decem-
11 ber 31, 2009.

12 (g) ADDITIONAL MODIFICATIONS TO ESTATE TAX.—

13 (1) IN GENERAL.—The following provisions of
14 the Economic Growth and Tax Relief Reconciliation
15 Act of 2001, and the amendments made by such
16 provisions, are hereby repealed:

17 (A) Subtitles A and E of title V.

18 (B) Subsection (d), and so much of sub-
19 section (f)(3) as relates to subsection (d), of
20 section 511.

21 (C) Paragraph (2) of subsection (b), and
22 paragraph (2) of subsection (e), of section 521.

23 The Internal Revenue Code of 1986 shall be applied
24 as if such provisions and amendments had never
25 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 of the Internal Revenue Code of 1986 are hereby repealed.

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

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

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

SEC. 3. UNIFIED CREDIT INCREASED BY UNUSED UNIFIED CREDIT OF DECEASED SPOUSE.

(a) IN GENERAL.—Subsection (c) of section 2010 of the Internal Revenue Code of 1986 (defining applicable credit amount), as amended by section 2(b), is amended

1 by striking paragraph (2) and inserting the following new
2 paragraphs:

3 “(2) APPLICABLE EXCLUSION AMOUNT.—For
4 purposes of this subsection, the applicable exclusion
5 amount is the sum of—

6 “(A) the basic exclusion amount, and

7 “(B) in the case of a surviving spouse, the
8 aggregate deceased spousal unused exclusion
9 amount.

10 “(3) BASIC EXCLUSION AMOUNT.—For pur-
11 poses of this subsection, the basic exclusion amount
12 is \$5,000,000.

13 “(4) AGGREGATE DECEASED SPOUSAL UNUSED
14 EXCLUSION AMOUNT.—For purposes of this sub-
15 section, the term ‘aggregate deceased spousal unused
16 exclusion amount’ means the lesser of—

17 “(A) the basic exclusion amount, or

18 “(B) the sum of the deceased spousal un-
19 used exclusion amounts of the surviving spouse.

20 “(5) DECEASED SPOUSAL UNUSED EXCLUSION
21 AMOUNT.—For purposes of this subsection, the term
22 ‘deceased spousal unused exclusion amount’ means,
23 with respect to the surviving spouse of any deceased
24 spouse dying after December 31, 2009, the excess (if
25 any) of—

1 “(A) the applicable exclusion amount of
2 the deceased spouse, over

3 “(B) the amount with respect to which the
4 tentative tax is determined under section
5 2001(b)(1) on the estate of such deceased
6 spouse.

7 “(6) SPECIAL RULES.—

8 “(A) ELECTION REQUIRED.—A deceased
9 spousal unused exclusion amount may not be
10 taken into account by a surviving spouse under
11 paragraph (5) unless the executor of the estate
12 of the deceased spouse files an estate tax return
13 on which such amount is computed and makes
14 an election on such return that such amount
15 may be so taken into account. Such election,
16 once made, shall be irrevocable. No election
17 may be made under this subparagraph if such
18 return is filed after the time prescribed by law
19 (including extensions) for filing such return.

20 “(B) EXAMINATION OF PRIOR RETURNS
21 AFTER EXPIRATION OF PERIOD OF LIMITATIONS
22 WITH RESPECT TO DECEASED SPOUSAL UN-
23 USED EXCLUSION AMOUNT.—Notwithstanding
24 any period of limitation in section 6501, after
25 the time has expired under section 6501 within

1 which a tax may be assessed under chapter 11
2 or 12 with respect to a deceased spousal unused
3 exclusion amount, the Secretary may examine a
4 return of the deceased spouse to make deter-
5 minations with respect to such amount for pur-
6 poses of carrying out this subsection.

7 “(7) REGULATIONS.—The Secretary shall pre-
8 scribe such regulations as may be necessary or ap-
9 propriate to carry out this subsection.”.

10 (b) CONFORMING AMENDMENTS.—

11 (1) Paragraph (1) of section 2505(a) of such
12 Code, as amended by section 2, is amended to read
13 as follows:

14 “(1) the applicable credit amount under section
15 2010(c) which would apply if the donor died as of
16 the end of the calendar year, reduced by”.

17 (2) Section 6018(a)(1) of such Code, after the
18 application of section 2(g), is amended by striking
19 “applicable exclusion amount” and inserting “basic
20 exclusion amount”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to estates of decedents dying, gen-
23 eration-skipping transfers, and gifts made, after Decem-
24 ber 31, 2009.

1 **SEC. 4. DEDUCTION FOR QUALIFIED TIMBER GAIN.**

2 (a) IN GENERAL.—Part I of subchapter P of chapter
3 1 of the Internal Revenue Code of 1986 is amended by
4 adding at the end the following new section:

5 **“SEC. 1203. DEDUCTION FOR QUALIFIED TIMBER GAIN.**

6 “(a) IN GENERAL.—In the case of a taxpayer which
7 elects the application of this section for a taxable year,
8 there shall be allowed a deduction against gross income
9 equal to 60 percent of the lesser of—

10 “(1) the taxpayer’s qualified timber gain for
11 such year, or

12 “(2) the taxpayer’s net capital gain for such
13 year.

14 “(b) QUALIFIED TIMBER GAIN.—For purposes of
15 this section, the term ‘qualified timber gain’ means, with
16 respect to any taxpayer for any taxable year, the excess
17 (if any) of—

18 “(1) the sum of the taxpayer’s gains described
19 in subsections (a) and (b) of section 631 for such
20 year, over

21 “(2) the sum of the taxpayer’s losses described
22 in such subsections for such year.

23 “(c) SPECIAL RULES FOR PASS-THRU ENTITIES.—
24 In the case of any qualified timber gain of a pass-thru
25 entity (as defined in section 1(h)(10))—

1 “(1) the election under this section shall be
 2 made separately by each taxpayer subject to tax on
 3 such gain, and

4 “(2) the Secretary may prescribe such regula-
 5 tions as are appropriate to apply this section to such
 6 gain.

7 “(d) TERMINATION.—No disposition of timber after
 8 December 31, 2008, shall be taken into account under
 9 subsection (b).”.

10 (b) COORDINATION WITH MAXIMUM CAPITAL GAINS
 11 RATES.—

12 (1) TAXPAYERS OTHER THAN CORPORA-
 13 TIONS.—Paragraph (2) of section 1(h) of such Code
 14 is amended to read as follows:

15 “(2) REDUCTION OF NET CAPITAL GAIN.—For
 16 purposes of this subsection, the net capital gain for
 17 any taxable year shall be reduced (but not below
 18 zero) by the sum of—

19 “(A) the amount which the taxpayer takes
 20 into account as investment income under sec-
 21 tion 163(d)(4)(B)(iii), and

22 “(B) in the case of a taxable year with re-
 23 spect to which an election is in effect under sec-
 24 tion 1203, the lesser of—

1 “(i) the amount described in para-
2 graph (1) of section 1203(a), or

3 “(ii) the amount described in para-
4 graph (2) of such section.”.

5 (2) CORPORATIONS.—Section 1201 of such
6 Code is amended by redesignating subsection (b) as
7 subsection (c) and inserting after subsection (a) the
8 following new subsection:

9 “(b) QUALIFIED TIMBER GAIN NOT TAKEN INTO AC-
10 COUNT.—For purposes of this section, in the case of a
11 corporation with respect to which an election is in effect
12 under section 1203, the net capital gain for any taxable
13 year shall be reduced (but not below zero) by the corpora-
14 tion’s qualified timber gain (as defined in section
15 1203(b)).”.

16 (c) DEDUCTION ALLOWED WHETHER OR NOT INDIV-
17 IDUAL ITEMIZES OTHER DEDUCTIONS.—Subsection (a)
18 of section 62 of such Code is amended by inserting before
19 the last sentence the following new paragraph:

20 “(21) QUALIFIED TIMBER GAINS.—The deduc-
21 tion allowed by section 1203.”.

22 (d) DEDUCTION ALLOWED IN COMPUTING AD-
23 JUSTED CURRENT EARNINGS.—Subparagraph (C) of sec-
24 tion 56(g)(4) of such Code is amended by adding at the
25 end the following new clause:

1 “(vii) DEDUCTION FOR QUALIFIED
 2 TIMBER GAIN.—Clause (i) shall not apply
 3 to any deduction allowed under section
 4 1203.”.

5 (e) DEDUCTION ALLOWED IN COMPUTING TAXABLE
 6 INCOME OF ELECTING SMALL BUSINESS TRUSTS.—Sub-
 7 paragraph (C) of section 641(c)(2) of such Code is amend-
 8 ed by inserting after clause (iii) the following new clause:

9 “(iv) The deduction allowed under
 10 section 1203.”.

11 (f) CONFORMING AMENDMENTS.—

12 (1) Subparagraph (B) of section 172(d)(2) of
 13 such Code is amended to read as follows:

14 “(B) the exclusion under section 1202 and
 15 the deduction under section 1203 shall not be
 16 allowed.”.

17 (2) Paragraph (4) of section 642(c) of such
 18 Code is amended by striking the first sentence and
 19 inserting the following: “To the extent that the
 20 amount otherwise allowable as a deduction under
 21 this subsection consists of gain described in section
 22 1202(a) or qualified timber gain (as defined in sec-
 23 tion 1203(b)), proper adjustment shall be made for
 24 any exclusion allowable to the estate or trust under

1 section 1202 and for any deduction allowable to the
2 estate or trust under section 1203.”.

3 (3) Paragraph (3) of section 643(a) of such
4 Code is amended by striking the last sentence and
5 inserting the following: “The exclusion under section
6 1202 and the deduction under section 1203 shall not
7 be taken into account.”.

8 (4) Subparagraph (C) of section 643(a)(6) of
9 such Code is amended to read as follows:

10 “(C) Paragraph (3) shall not apply to a
11 foreign trust. In the case of such a trust—

12 “(i) there shall be included gains from
13 the sale or exchange of capital assets, re-
14 duced by losses from such sales or ex-
15 changes to the extent such losses do not
16 exceed gains from such sales or exchanges,
17 and

18 “(ii) the deduction under section 1203
19 shall not be taken into account.”.

20 (5) Paragraph (4) of section 691(c) of such
21 Code is amended by inserting “1203,” after
22 “1202,”.

23 (6) Paragraph (2) of section 871(a) of such
24 Code is amended by striking “section 1202” and in-
25 serting “sections 1202 and 1203”.

1 (7) The table of sections for part I of sub-
2 chapter P of chapter 1 of such Code is amended by
3 adding at the end the following new item:

“Sec. 1203. Deduction for qualified timber gain.”.

4 (g) EFFECTIVE DATE.—

5 (1) IN GENERAL.—The amendments made by
6 this section shall apply to taxable years ending after
7 the date of the enactment of this Act.

8 (2) TAXABLE YEARS WHICH INCLUDE DATE OF
9 ENACTMENT.—In the case of any taxable year which
10 includes the date of the enactment of this Act, for
11 purposes of the Internal Revenue Code of 1986, the
12 taxpayer’s qualified timber gain shall not exceed the
13 excess that would be described in section 1203(b) of
14 such Code, as added by this section, if only disposi-
15 tions of timber after such date were taken into ac-
16 count.

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