

107TH CONGRESS  
1ST SESSION

# H. R. 8

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## AN ACT

To amend the Internal Revenue Code of 1986 to phaseout the estate and gift taxes over a 10-year period, 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,*

1 **SECTION 1. SHORT TITLE; ETC.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Death Tax Elimination Act of 2001”.

4 (b) AMENDMENT OF 1986 CODE.—Except as other-  
5 wise expressly provided, whenever in this Act an amend-  
6 ment or repeal is expressed in terms of an amendment  
7 to, or repeal of, a section or other provision, the reference  
8 shall be considered to be made to a section or other provi-  
9 sion of the Internal Revenue Code of 1986.

10 (c) TABLE OF CONTENTS.—

Sec. 1. Short title; etc.

TITLE I—REPEAL OF ESTATE, GIFT, AND GENERATION-SKIPPING  
TAXES

Sec. 101. Repeal of estate, gift, and generation-skipping taxes.

TITLE II—REDUCTIONS OF ESTATE AND GIFT TAX RATES PRIOR  
TO REPEAL

Sec. 201. Additional reductions of estate and gift tax rates.

TITLE III—UNIFIED CREDIT REPLACED WITH UNIFIED  
EXEMPTION AMOUNT

Sec. 301. Unified credit against estate and gift taxes replaced with unified ex-  
emption amount.

TITLE IV—CARRYOVER BASIS AT DEATH; OTHER CHANGES  
TAKING EFFECT WITH REPEAL

Sec. 401. Termination of step-up in basis at death.

Sec. 402. Treatment of property acquired from a decedent dying after Decem-  
ber 31, 2010.

TITLE V—CONSERVATION EASEMENTS

Sec. 501. Expansion of estate tax rule for conservation easements.

TITLE VI—MODIFICATIONS OF GENERATION-SKIPPING TRANSFER  
TAX

Sec. 601. Deemed allocation of GST exemption to lifetime transfers to trusts;  
retroactive allocations.

Sec. 602. Severing of trusts.

Sec. 603. Modification of certain valuation rules.

Sec. 604. Relief provisions.

## TITLE VII—EXTENSION OF TIME FOR PAYMENT OF ESTATE TAX

Sec. 701. Increase in number of allowable partners and shareholders in closely held businesses.

1 **TITLE I—REPEAL OF ESTATE,**  
 2 **GIFT, AND GENERATION-SKIP-**  
 3 **PING TAXES**

4 **SEC. 101. REPEAL OF ESTATE, GIFT, AND GENERATION-**  
 5 **SKIPPING TAXES.**

6 (a) IN GENERAL.—Subtitle B is hereby repealed.

7 (b) EFFECTIVE DATE.—The repeal made by sub-  
 8 section (a) shall apply to the estates of decedents dying,  
 9 and gifts and generation-skipping transfers made, after  
 10 December 31, 2010.

11 **TITLE II—REDUCTIONS OF ES-**  
 12 **TATE AND GIFT TAX RATES**  
 13 **PRIOR TO REPEAL**

14 **SEC. 201. ADDITIONAL REDUCTIONS OF ESTATE AND GIFT**  
 15 **TAX RATES.**

16 (a) MAXIMUM RATE OF TAX REDUCED TO 50 PER-  
 17 CENT.—

18 (1) IN GENERAL.—The table contained in sec-  
 19 tion 2001(c)(1) is amended by striking the two high-  
 20 est brackets and inserting the following:

“Over \$2,500,000 ..... \$1,025,800, plus 50% of the excess  
 over \$2,500,000.”.

1           (2) PHASE-IN OF REDUCED RATE.—Subsection  
2           (c) of section 2001 is amended by adding at the end  
3           the following new paragraph:

4           “(3) PHASE-IN OF REDUCED RATE.—In the  
5           case of decedents dying, and gifts made, during  
6           2002, the last item in the table contained in para-  
7           graph (1) shall be applied by substituting ‘53%’ for  
8           ‘50%.’”.

9           (b) REPEAL OF PHASEOUT OF GRADUATED  
10          RATES.—Subsection (c) of section 2001 is amended by  
11          striking paragraph (2) and redesignating paragraph (3),  
12          as added by subsection (a), as paragraph (2).

13          (c) ADDITIONAL REDUCTIONS OF RATES OF TAX.—  
14          Subsection (c) of section 2001, as so amended, is amended  
15          by adding at the end the following new paragraph:

16          “(3) PHASEDOWN OF TAX.—In the case of es-  
17          tates of decedents dying, and gifts made, during any  
18          calendar year after 2003 and before 2011—

19                  “(A) IN GENERAL.—Except as provided in  
20                  subparagraph (C), the tentative tax under this  
21                  subsection shall be determined by using a table  
22                  prescribed by the Secretary (in lieu of using the  
23                  table contained in paragraph (1)) which is the  
24                  same as such table; except that—

1 “(i) each of the rates of tax shall be  
 2 reduced by the number of percentage  
 3 points determined under subparagraph  
 4 (B), and

5 “(ii) the amounts setting forth the tax  
 6 shall be adjusted to the extent necessary to  
 7 reflect the adjustments under clause (i).

8 “(B) PERCENTAGE POINTS OF REDUC-  
 9 TION.—

<b>“For calendar year:</b>	<b>The number of percentage points is:</b>
2004 .....	1.0
2005 .....	2.0
2006 .....	3.0
2007 .....	5.0
2008 .....	7.0
2009 .....	9.0
2010 .....	11.0.

10 “(C) COORDINATION WITH INCOME TAX  
 11 RATES.—The reductions under subparagraph  
 12 (A)—

13 “(i) shall not reduce any rate under  
 14 paragraph (1) below the lowest rate in sec-  
 15 tion 1(c) applicable to the taxable year  
 16 which includes the date of death (or, in the  
 17 case of a gift, the date of the gift), and

18 “(ii) shall not reduce the highest rate  
 19 under paragraph (1) below the highest rate  
 20 in section 1(c) for such taxable year.

1           “(D) COORDINATION WITH CREDIT FOR  
 2           STATE DEATH TAXES.—Rules similar to the  
 3           rules of subparagraph (A) shall apply to the  
 4           table contained in section 2011(b) except that  
 5           the Secretary shall prescribe percentage point  
 6           reductions which maintain the proportionate re-  
 7           lationship (as in effect before any reduction  
 8           under this paragraph) between the credit under  
 9           section 2011 and the tax rates under subsection  
 10          (c).”.

11          (d) EFFECTIVE DATES.—

12           (1) SUBSECTIONS (a) AND (b).—The amend-  
 13           ments made by subsections (a) and (b) shall apply  
 14           to estates of decedents dying, and gifts made, after  
 15           December 31, 2001.

16           (2) SUBSECTION (c).—The amendment made by  
 17           subsection (c) shall apply to estates of decedents  
 18           dying, and gifts made, after December 31, 2003.

19       **TITLE III—UNIFIED CREDIT RE-**  
 20       **PLACED WITH UNIFIED EX-**  
 21       **EMPTION AMOUNT**

22       **SEC. 301. UNIFIED CREDIT AGAINST ESTATE AND GIFT**  
 23               **TAXES REPLACED WITH UNIFIED EXEMPTION**  
 24               **AMOUNT.**

25           (a) IN GENERAL.—

1           (1) ESTATE TAX.—Subsection (b) of section  
2           2001 (relating to computation of tax) is amended to  
3           read as follows:

4           “(b) COMPUTATION OF TAX.—

5           “(1) IN GENERAL.—The tax imposed by this  
6           section shall be the amount equal to the excess (if  
7           any) of—

8                   “(A) the tentative tax determined under  
9                   paragraph (2), over

10                   “(B) the aggregate amount of tax which  
11                   would have been payable under chapter 12 with  
12                   respect to gifts made by the decedent after De-  
13                   cember 31, 1976, if the provisions of subsection  
14                   (c) (as in effect at the decedent’s death) had  
15                   been applicable at the time of such gifts.

16           “(2) TENTATIVE TAX.—For purposes of para-  
17           graph (1), the tentative tax determined under this  
18           paragraph is a tax computed under subsection (c) on  
19           the excess of—

20                   “(A) the sum of—

21                           “(i) the amount of the taxable estate,  
22                           and

23                           “(ii) the amount of the adjusted tax-  
24                           able gifts, over

1           “(B) the exemption amount for the cal-  
2           endar year in which the decedent died.

3           “(3) EXEMPTION AMOUNT.—For purposes of  
4           paragraph (2), the term ‘exemption amount’ means  
5           the amount determined in accordance with the fol-  
6           lowing table:

<b>“In the case of calendar year:</b>	<b>The exemption amount is:</b>
2002 and 2003 .....	\$700,000
2004 .....	\$850,000
2005 .....	\$950,000
2006 or thereafter .....	\$1,000,000.

7           “(4) ADJUSTED TAXABLE GIFTS.—For pur-  
8           poses of paragraph (2), the term ‘adjusted taxable  
9           gifts’ means the total amount of the taxable gifts  
10          (within the meaning of section 2503) made by the  
11          decedent after December 31, 1976, other than gifts  
12          which are includible in the gross estate of the dece-  
13          dent.”.

14          (2) GIFT TAX.—Subsection (a) of section 2502  
15          (relating to computation of tax) is amended to read  
16          as follows:

17          “(a) COMPUTATION OF TAX.—

18                 “(1) IN GENERAL.—The tax imposed by section  
19                 2501 for each calendar year shall be the amount  
20                 equal to the excess (if any) of—

21                         “(A) the tentative tax determined under  
22                         paragraph (2) for such calendar year, over

1           “(B) the aggregate amount of tax that  
2           would have been payable under this chapter  
3           with respect to gifts made by the donor in pre-  
4           ceding calendar periods if the tax had been  
5           computed under the provisions of section  
6           2001(c) as in effect for such calendar year.

7           “(2) TENTATIVE TAX.—For purposes of para-  
8           graph (1), the tentative tax determined under this  
9           paragraph for a calendar year is a tax computed  
10          under section 2001(c) on the excess of—

11                  “(A) the aggregate sum of the taxable gifts  
12                  for such calendar year and for each of the pre-  
13                  ceding calendar periods, over

14                  “(B) the exemption amount under section  
15                  2001(b)(3) for such calendar year.”.

16          (b) REPEAL OF UNIFIED CREDITS.—

17                  (1) Section 2010 (relating to unified credit  
18                  against estate tax) is hereby repealed.

19                  (2) Section 2505 (relating to unified credit  
20                  against gift tax) is hereby repealed.

21          (c) CONFORMING AMENDMENTS.—

22                  (1)(A) Subsection (b) of section 2011 is  
23                  amended—

24                          (i) by striking “adjusted” in the table; and

25                          (ii) by striking the last sentence.

1           (B) Subsection (f) of section 2011 is amended  
2           by striking “, reduced by the amount of the unified  
3           credit provided by section 2010”.

4           (2) Subsection (a) of section 2012 is amended  
5           by striking “and the unified credit provided by sec-  
6           tion 2010”.

7           (3) Subparagraph (A) of section 2013(c)(1) is  
8           amended by striking “2010,”.

9           (4) Paragraph (2) of section 2014(b) is amend-  
10          ed by striking “2010, 2011,” and inserting “2011”.

11          (5) Clause (ii) of section 2056A(b)(12)(C) is  
12          amended to read as follows:

13                   “(ii) to treat any reduction in the tax  
14                   imposed by paragraph (1)(A) by reason of  
15                   the credit allowable under section 2010 (as  
16                   in effect on the day before the date of the  
17                   enactment of the Death Tax Elimination  
18                   Act of 2001) or the exemption amount al-  
19                   lowable under section 2001(b) with respect  
20                   to the decedent as a credit under section  
21                   2505 (as so in effect) or exemption under  
22                   section 2501 (as the case may be) allow-  
23                   able to such surviving spouse for purposes  
24                   of determining the amount of the exemp-  
25                   tion allowable under section 2501 with re-

1           spect to taxable gifts made by the sur-  
2           viving spouse during the year in which the  
3           spouse becomes a citizen or any subse-  
4           quent year.”.

5           (6) Subsection (a) of section 2057 is amended  
6           by striking paragraphs (2) and (3) and inserting the  
7           following new paragraph:

8           “(2) MAXIMUM DEDUCTION.—The deduction al-  
9           lowed by this section shall not exceed the excess of  
10          \$1,300,000 over the exemption amount (as defined  
11          in section 2001(b)(3)).”.

12          (7) Subsection (b) of section 2101 is amended  
13          to read as follows:

14          “(b) COMPUTATION OF TAX.—

15                 “(1) IN GENERAL.—The tax imposed by this  
16                 section shall be the amount equal to the excess (if  
17                 any) of—

18                         “(A) the tentative tax determined under  
19                         paragraph (2), over

20                         “(B) a tentative tax computed under sec-  
21                         tion 2001(c) on the amount of the adjusted tax-  
22                         able gifts.

23                 “(2) TENTATIVE TAX.—For purposes of para-  
24                 graph (1), the tentative tax determined under this

1 paragraph is a tax computed under section 2001(c)  
2 on the excess of—

3 “(A) the sum of—

4 “(i) the amount of the taxable estate,  
5 and

6 “(ii) the amount of the adjusted tax-  
7 able gifts, over

8 “(B) the exemption amount for the cal-  
9 endar year in which the decedent died.

10 “(3) EXEMPTION AMOUNT.—

11 “(A) IN GENERAL.—The term ‘exemption  
12 amount’ means \$60,000.

13 “(B) RESIDENTS OF POSSESSIONS OF THE  
14 UNITED STATES.—In the case of a decedent  
15 who is considered to be a nonresident not a cit-  
16 izen of the United States under section 2209,  
17 the exemption amount under this paragraph  
18 shall be the greater of—

19 “(i) \$60,000, or

20 “(ii) that proportion of \$175,000  
21 which the value of that part of the dece-  
22 dent’s gross estate which at the time of his  
23 death is situated in the United States  
24 bears to the value of his entire gross estate  
25 wherever situated.

1 “(C) SPECIAL RULES.—

2 “(i) COORDINATION WITH TREA-  
3 TIES.—To the extent required under any  
4 treaty obligation of the United States, the  
5 exemption amount allowed under this para-  
6 graph shall be equal to the amount which  
7 bears the same ratio to the exemption  
8 amount under section 2001(b)(3) (for the  
9 calendar year in which the decedent died)  
10 as the value of the part of the decedent’s  
11 gross estate which at the time of his death  
12 is situated in the United States bears to  
13 the value of his entire gross estate wher-  
14 ever situated. For purposes of the pre-  
15 ceding sentence, property shall not be  
16 treated as situated in the United States if  
17 such property is exempt from the tax im-  
18 posed by this subchapter under any treaty  
19 obligation of the United States.

20 “(ii) COORDINATION WITH GIFT TAX  
21 EXEMPTION AND UNIFIED CREDIT.—If an  
22 exemption has been allowed under section  
23 2501 (or a credit has been allowed under  
24 section 2505 as in effect on the day before  
25 the date of the enactment of the Death

1 Tax Elimination Act of 2001) with respect  
2 to any gift made by the decedent, each dol-  
3 lar amount contained in subparagraph (A)  
4 or (B) or the exemption amount applicable  
5 under clause (i) of this subparagraph  
6 (whichever applies) shall be reduced by the  
7 exemption so allowed under section 2501  
8 (or, in the case of such a credit, by the  
9 amount of the gift for which the credit was  
10 so allowed).”.

11 (8) Section 2102 is amended by striking sub-  
12 section (c).

13 (9)(A) Paragraph (1) of section 2107(a) is  
14 amended by striking “the table contained in”.

15 (B) Paragraph (1) of section 2107(c) is amend-  
16 ed to read as follows:

17 “(1) EXEMPTION AMOUNT.—For purposes of  
18 subsection (a), the exemption amount under section  
19 2001 shall be \$60,000.”.

20 (C) Paragraph (3) of section 2107(c) is amend-  
21 ed by striking the second sentence.

22 (D) The heading of subsection (c) of section  
23 2107 is amended to read as follows:

24 “(c) EXEMPTION AMOUNT AND CREDITS.—”.

1           (10) Paragraph (1) of section 6018(a) is  
2           amended by striking “the applicable exclusion  
3           amount in effect under section 2010(c)” and insert-  
4           ing “the exemption amount under section  
5           2001(b)(3)”.

6           (11) Subparagraph (A) of section 6601(j)(2) is  
7           amended to read as follows:

8                   “(A) the amount of the tentative tax which  
9                   would be determined under the rate schedule  
10                  set forth in section 2001(c) if the amount with  
11                  respect to which such tentative tax is to be  
12                  computed were \$1,000,000, or”.

13           (12) The table of sections for part II of sub-  
14           chapter A of chapter 11 is amended by striking the  
15           item relating to section 2010.

16           (13) The table of sections for subchapter A of  
17           chapter 12 is amended by striking the item relating  
18           to section 2505.

19           (d) EFFECTIVE DATE.—The amendments made by  
20           this section shall apply to estates of decedents dying and  
21           gifts made after December 31, 2001.

1 **TITLE IV—CARRYOVER BASIS AT**  
2 **DEATH; OTHER CHANGES**  
3 **TAKING EFFECT WITH RE-**  
4 **PEAL**

5 **SEC. 401. TERMINATION OF STEP-UP IN BASIS AT DEATH.**

6 Section 1014 (relating to basis of property acquired  
7 from a decedent) is amended by adding at the end the  
8 following new subsection:

9 “(f) TERMINATION.—This section shall not apply  
10 with respect to decedents dying after December 31,  
11 2010.”.

12 **SEC. 402. TREATMENT OF PROPERTY ACQUIRED FROM A**  
13 **DECEDENT DYING AFTER DECEMBER 31, 2010.**

14 (a) GENERAL RULE.—Part II of subchapter O of  
15 chapter 1 (relating to basis rules of general application)  
16 is amended by inserting after section 1021 the following  
17 new section:

18 **“SEC. 1022. TREATMENT OF PROPERTY ACQUIRED FROM A**  
19 **DECEDENT DYING AFTER DECEMBER 31, 2010.**

20 “(a) IN GENERAL.—Except as otherwise provided in  
21 this section—

22 “(1) property acquired from a decedent dying  
23 after December 31, 2010, shall be treated for pur-  
24 poses of this subtitle as transferred by gift, and

1           “(2) the basis of the person acquiring property  
2 from such a decedent shall be the lesser of—

3                   “(A) the adjusted basis of the decedent, or

4                   “(B) the fair market value of the property  
5 at the date of the decedent’s death.

6           “(b) BASIS INCREASE FOR CERTAIN PROPERTY.—

7                   “(1) IN GENERAL.—In the case of property to  
8 which this subsection applies, the basis of such prop-  
9 erty under subsection (a) shall be increased by its  
10 basis increase under this subsection.

11                   “(2) BASIS INCREASE.—For purposes of this  
12 subsection—

13                           “(A) IN GENERAL.—The basis increase  
14 under this subsection for any property is the  
15 portion of the aggregate basis increase which is  
16 allocated to the property pursuant to this sec-  
17 tion.

18                           “(B) AGGREGATE BASIS INCREASE.—In  
19 the case of any estate, the aggregate basis in-  
20 crease under this subsection is \$1,300,000.

21                           “(C) LIMIT INCREASED BY UNUSED BUILT-  
22 IN LOSSES AND LOSS CARRYOVERS.—The limi-  
23 tation under subparagraph (B) shall be in-  
24 creased by—

1           “(i) the sum of the amount of any  
2 capital loss carryover under section  
3 1212(b), and the amount of any net oper-  
4 ating loss carryover under section 172,  
5 which would (but for the decedent’s death)  
6 be carried from the decedent’s last taxable  
7 year to a later taxable year of the dece-  
8 dent, plus

9           “(ii) the sum of the amount of any  
10 losses that would have been allowable  
11 under section 165 if the property acquired  
12 from the decedent had been sold at fair  
13 market value immediately before the dece-  
14 dent’s death.

15           “(3) DECEDENT NONRESIDENTS WHO ARE NOT  
16 CITIZENS OF THE UNITED STATES.—In the case of  
17 a decedent nonresident not a citizen of the United  
18 States—

19           “(A) paragraph (2)(B) shall be applied by  
20 substituting ‘\$60,000’ for ‘\$1,300,000’, and

21           “(B) paragraph (2)(C) shall not apply.

22           “(c) ADDITIONAL BASIS INCREASE FOR PROPERTY  
23 ACQUIRED BY SURVIVING SPOUSE.—

24           “(1) IN GENERAL.—In the case of property to  
25 which this subsection applies and which is qualified

1 spousal property, the basis of such property under  
2 subsection (a) (as increased, if any, under subsection  
3 (b)) shall be increased by its spousal property basis  
4 increase.

5 “(2) SPOUSAL PROPERTY BASIS INCREASE.—  
6 For purposes of this subsection—

7 “(A) IN GENERAL.—The spousal property  
8 basis increase for property referred to in para-  
9 graph (1) is the portion of the aggregate spousal  
10 property basis increase which is allocated to  
11 the property pursuant to this section.

12 “(B) AGGREGATE SPOUSAL PROPERTY  
13 BASIS INCREASE.—In the case of any estate,  
14 the aggregate spousal property basis increase is  
15 \$3,000,000.

16 “(3) QUALIFIED SPOUSAL PROPERTY.—For  
17 purposes of this subsection, the term ‘qualified  
18 spousal property’ means—

19 “(A) outright transfer property, and

20 “(B) qualified terminable interest property.

21 “(4) OUTRIGHT TRANSFER PROPERTY.—For  
22 purposes of this subsection—

23 “(A) IN GENERAL.—The term ‘outright  
24 transfer property’ means any interest in prop-

1           erty acquired from the decedent by the dece-  
2           dent’s surviving spouse.

3           “(B)   EXCEPTION.—Subparagraph   (A)  
4           shall not apply where, on the lapse of time, on  
5           the occurrence of an event or contingency, or on  
6           the failure of an event or contingency to occur,  
7           an interest passing to the surviving spouse will  
8           terminate or fail—

9                   “(i)(I) if an interest in such property  
10                   passes or has passed (for less than an ade-  
11                   quate and full consideration in money or  
12                   money’s worth) from the decedent to any  
13                   person other than such surviving spouse  
14                   (or the estate of such spouse), and

15                   “(II) if by reason of such passing  
16                   such person (or his heirs or assigns) may  
17                   possess or enjoy any part of such property  
18                   after such termination or failure of the in-  
19                   terest so passing to the surviving spouse,  
20                   or

21                   “(ii) if such interest is to be acquired  
22                   for the surviving spouse, pursuant to direc-  
23                   tions of the decedent, by his executor or by  
24                   the trustee of a trust.

1 For purposes of this subparagraph, an interest  
2 shall not be considered as an interest which will  
3 terminate or fail merely because it is the owner-  
4 ship of a bond, note, or similar contractual obli-  
5 gation, the discharge of which would not have  
6 the effect of an annuity for life or for a term.

7 “(C) INTEREST OF SPOUSE CONDITIONAL  
8 ON SURVIVAL FOR LIMITED PERIOD.—For pur-  
9 poses of this paragraph, an interest passing to  
10 the surviving spouse shall not be considered as  
11 an interest which will terminate or fail on the  
12 death of such spouse if—

13 “(i) such death will cause a termi-  
14 nation or failure of such interest only if it  
15 occurs within a period not exceeding 6  
16 months after the decedent’s death, or only  
17 if it occurs as a result of a common dis-  
18 aster resulting in the death of the decedent  
19 and the surviving spouse, or only if it oc-  
20 curs in the case of either such event, and

21 “(ii) such termination or failure does  
22 not in fact occur.

23 “(5) QUALIFIED TERMINABLE INTEREST PROP-  
24 erty.—For purposes of this subsection—

1           “(A) IN GENERAL.—The term ‘qualified ter-  
2 minable interest property’ means property—

3                   “(i) which passes from the decedent,  
4                   and

5                   “(ii) in which the surviving spouse has  
6                   a qualifying income interest for life.

7           “(B) QUALIFYING INCOME INTEREST FOR  
8 LIFE.—The surviving spouse has a qualifying  
9 income interest for life if—

10                   “(i) the surviving spouse is entitled to  
11                   all the income from the property, payable  
12                   annually or at more frequent intervals, or  
13                   has a usufruct interest for life in the prop-  
14                   erty, and

15                   “(ii) no person has a power to appoint  
16                   any part of the property to any person  
17                   other than the surviving spouse.

18           Clause (ii) shall not apply to a power exer-  
19           cisable only at or after the death of the sur-  
20           viving spouse. To the extent provided in regula-  
21           tions, an annuity shall be treated in a manner  
22           similar to an income interest in property (re-  
23           gardless of whether the property from which the  
24           annuity is payable can be separately identified).

1           “(C) PROPERTY INCLUDES INTEREST  
2           THEREIN.—The term ‘property’ includes an in-  
3           terest in property.

4           “(D) SPECIFIC PORTION TREATED AS SEP-  
5           ARATE PROPERTY.—A specific portion of prop-  
6           erty shall be treated as separate property. For  
7           purposes of the preceding sentence, the term  
8           ‘specific portion’ only includes a portion deter-  
9           mined on a fractional or percentage basis.

10          “(d) DEFINITIONS AND SPECIAL RULES FOR APPLI-  
11          CATION OF SUBSECTIONS (b) AND (c).—

12           “(1) PROPERTY TO WHICH SUBSECTIONS (b)  
13          AND (c) APPLY.—

14           “(A) IN GENERAL.—The basis of property  
15          acquired from a decedent may be increased  
16          under subsection (b) or (c) only if the property  
17          was owned by the decedent at the time of  
18          death.

19           “(B) RULES RELATING TO OWNERSHIP.—

20           “(i) JOINTLY HELD PROPERTY.—In  
21          the case of property which was owned by  
22          the decedent and another person as joint  
23          tenants with right of survivorship or ten-  
24          ants by the entirety—

1           “(I) if the only such other person  
2           is the surviving spouse, the decedent  
3           shall be treated as the owner of only  
4           50 percent of the property,

5           “(II) in any case (to which sub-  
6           clause (I) does not apply) in which the  
7           decedent furnished consideration for  
8           the acquisition of the property, the de-  
9           cedent shall be treated as the owner  
10          to the extent of the portion of the  
11          property which is proportionate to  
12          such consideration, and

13          “(III) in any case (to which sub-  
14          clause (I) does not apply) in which the  
15          property has been acquired by gift,  
16          bequest, devise, or inheritance by the  
17          decedent and any other person as  
18          joint tenants with right of survivor-  
19          ship and their interests are not other-  
20          wise specified or fixed by law, the de-  
21          cedent shall be treated as the owner  
22          to the extent of the value of a frac-  
23          tional part to be determined by divid-  
24          ing the value of the property by the

1                   number of joint tenants with right of  
2                   survivorship.

3                   “(ii) REVOCABLE TRUSTS.—The dece-  
4                   dent shall be treated as owning property  
5                   transferred by the decedent during life to  
6                   a revocable trust to pay all of the income  
7                   during the decedent’s life to the decedent  
8                   or at the direction of the decedent.

9                   “(iii) POWERS OF APPOINTMENT.—  
10                  The decedent shall not be treated as own-  
11                  ing any property by reason of holding a  
12                  power of appointment with respect to such  
13                  property.

14                  “(iv) COMMUNITY PROPERTY.—Prop-  
15                  erty which represents the surviving  
16                  spouse’s one-half share of community prop-  
17                  erty held by the decedent and the surviving  
18                  spouse under the community property laws  
19                  of any State or possession of the United  
20                  States or any foreign country shall be  
21                  treated for purposes of this section as  
22                  owned by, and acquired from, the decedent  
23                  if at least one-half of the whole of the com-  
24                  munity interest in such property is treated

1 as owned by, and acquired from, the dece-  
2 dent without regard to this clause.

3 “(C) PROPERTY ACQUIRED BY DECEDENT  
4 BY GIFT WITHIN 3 YEARS OF DEATH.—

5 “(i) IN GENERAL.—Subsections (b)  
6 and (c) shall not apply to property ac-  
7 quired by the decedent by gift or by inter  
8 vivos transfer for less than adequate and  
9 full consideration in money or money’s  
10 worth during the 3-year period ending on  
11 the date of the decedent’s death.

12 “(ii) EXCEPTION FOR CERTAIN GIFTS  
13 FROM SPOUSE.—Clause (i) shall not apply  
14 to property acquired by the decedent from  
15 the decedent’s spouse unless, during such  
16 3-year period, such spouse acquired the  
17 property in whole or in part by gift or by  
18 inter vivos transfer for less than adequate  
19 and full consideration in money or money’s  
20 worth.

21 “(D) STOCK OF CERTAIN ENTITIES.—Sub-  
22 sections (b) and (c) shall not apply to—

23 “(i) stock or securities a foreign per-  
24 sonal holding company,

1                   “(ii) stock of a DISC or former  
2                   DISC,

3                   “(iii) stock of a foreign investment  
4                   company, or

5                   “(iv) stock of a passive foreign invest-  
6                   ment company unless such company is a  
7                   qualified electing fund (as defined in sec-  
8                   tion 1295) with respect to the decedent.

9                   “(2) FAIR MARKET VALUE LIMITATION.—The  
10                  adjustments under subsection (b) and (c) shall not  
11                  increase the basis of any interest in property ac-  
12                  quired from the decedent above its fair market value  
13                  in the hands of the decedent as of the date of the  
14                  decedent’s death.

15                  “(3) ALLOCATION RULES.—

16                         “(A) IN GENERAL.—The executor shall al-  
17                         locate the adjustments under subsections (b)  
18                         and (c) on the return required by section 6018.

19                         “(B) CHANGES IN ALLOCATION.—Any allo-  
20                         cation made pursuant to subparagraph (A) may  
21                         be changed only as provided by the Secretary.

22                         “(4) INFLATION ADJUSTMENT OF BASIS AD-  
23                         JUSTMENT AMOUNTS.—

24                                 “(A) IN GENERAL.—In the case of dece-  
25                                 dents dying in a calendar year after 2011, the

1           \$1,300,000, \$60,000, and \$3,000,000 dollar  
2 amounts in subsections (b) and (c)(2)(B) shall  
3 each be increased by an amount equal to the  
4 product of—

5                   “(i) such dollar amount, and

6                   “(ii) the cost-of-living adjustment de-  
7 termined under section 1(f)(3) for such  
8 calendar year, determined by substituting  
9 ‘2010’ for ‘1992’ in subparagraph (B)  
10 thereof.

11           “(B) ROUNDING.—If any increase deter-  
12 mined under subparagraph (A) is not a multiple  
13 of—

14                   “(i) \$100,000 in the case of the  
15 \$1,300,000 amount,

16                   “(ii) \$5,000 in the case of the  
17 \$60,000 amount, and

18                   “(iii) \$250,000 in the case of the  
19 \$3,000,000 amount,

20 such increase shall be rounded to the next low-  
21 est multiple thereof.

22           “(e) PROPERTY ACQUIRED FROM THE DECEDENT.—  
23 For purposes of this section, the following property shall  
24 be considered to have been acquired from the decedent:

1           “(1) Property acquired by bequest, devise, or  
2 inheritance, or by the decedent’s estate from the de-  
3 cedent.

4           “(2) Property transferred by the decedent dur-  
5 ing his lifetime in trust to pay the income for life  
6 to or on the order or direction of the decedent, with  
7 the right reserved to the decedent at all times before  
8 his death—

9                   “(A) to revoke the trust, or

10                   “(B) to make any change in the enjoyment  
11 thereof through the exercise of a power to alter,  
12 amend, or terminate the trust.

13           “(3) Any other property passing from the dece-  
14 dent by reason of death to the extent that such  
15 property passed without consideration.

16           “(f) COORDINATION WITH SECTION 691.—This sec-  
17 tion shall not apply to property which constitutes a right  
18 to receive an item of income in respect of a decedent under  
19 section 691.

20           “(g) CERTAIN LIABILITIES DISREGARDED.—In de-  
21 termining whether gain is recognized on the acquisition  
22 of property—

23                   “(1) from a decedent by a decedent’s estate or  
24 any beneficiary, and



1 property acquired from the decedent exceeds the dol-  
2 lar amount applicable under section 1022(b)(2)(B)  
3 (without regard to section 1022(b)(2)(C)).

4 “(2) TRANSFERS OF CERTAIN GIFTS RECEIVED  
5 BY DECEDENT WITHIN 3 YEARS OF DEATH.—This  
6 section shall apply to any appreciated property ac-  
7 quired from the decedent if—

8 “(A) subsections (b) and (c) of section  
9 1022 do not apply to such property by reason  
10 of section 1022(d)(1)(C), and

11 “(B) such property was required to be in-  
12 cluded on a return required to be filed under  
13 section 6019.

14 “(3) NONRESIDENTS NOT CITIZENS OF THE  
15 UNITED STATES.—In the case of a decedent who is  
16 a nonresident not a citizen of the United States,  
17 paragraphs (1) and (2) shall be applied—

18 “(A) by taking into account only—

19 “(i) tangible property situated in the  
20 United States, and

21 “(ii) other property acquired from the  
22 decedent by a United States person, and

23 “(B) by substituting the dollar amount ap-  
24 plicable under section 1022(b)(3) for the dollar  
25 amount referred to in paragraph (1).

1           “(4) RETURNS BY TRUSTEES OR BENE-  
2           FICIARIES.—If the executor is unable to make a  
3           complete return as to any property acquired from or  
4           passing from the decedent, the executor shall include  
5           in the return a description of such property and the  
6           name of every person holding a legal or beneficial in-  
7           terest therein. Upon notice from the Secretary such  
8           person shall in like manner make a return as to  
9           such property.

10          “(c) INFORMATION REQUIRED TO BE FURNISHED.—  
11          The information specified in this subsection with respect  
12          to any property acquired from the decedent is—

13                 “(1) the name and TIN of the recipient of such  
14                 property,

15                 “(2) an accurate description of such property,

16                 “(3) the adjusted basis of such property in the  
17                 hands of the decedent and its fair market value at  
18                 the time of death,

19                 “(4) the decedent’s holding period for such  
20                 property,

21                 “(5) sufficient information to determine wheth-  
22                 er any gain on the sale of the property would be  
23                 treated as ordinary income,

1           “(6) the amount of basis increase allocated to  
2           the property under subsection (b) or (c) of section  
3           1022, and

4           “(7) such other information as the Secretary  
5           may by regulations prescribe.

6           “(d) PROPERTY ACQUIRED FROM DECEDENT.—For  
7           purposes of this section, section 1022 shall apply for pur-  
8           poses of determining the property acquired from a dece-  
9           dent.

10          “(e) STATEMENTS TO BE FURNISHED TO CERTAIN  
11          PERSONS.—Every person required to make a return under  
12          subsection (a) shall furnish to each person whose name  
13          is required to be set forth in such return (other than the  
14          person required to make such return) a written statement  
15          showing—

16                 “(1) the name, address, and phone number of  
17                 the person required to make such return, and

18                 “(2) the information specified in subsection (c)  
19                 with respect to property acquired from, or passing  
20                 from, the decedent to the person required to receive  
21                 such statement.

22          The written statement required under the preceding sen-  
23          tence shall be furnished not later than 30 days after the  
24          date that the return required by subsection (a) is filed.

1 **“SEC. 6019. RETURNS RELATING TO LARGE LIFETIME**  
2 **GIFTS.**

3 “(a) IN GENERAL.—If the value of the aggregate  
4 gifts of property made by an individual to any United  
5 States person during a calendar year exceeds \$25,000,  
6 such individual shall make a return for such year setting  
7 forth—

8 “(1) the name and TIN of the donee,

9 “(2) an accurate description of such property,

10 “(3) the adjusted basis of such property in the  
11 hands of the donor at the time of the gift,

12 “(4) the donor’s holding period for such prop-  
13 erty,

14 “(5) sufficient information to determine wheth-  
15 er any gain on the sale of the property would be  
16 treated as ordinary income, and

17 “(6) such other information as the Secretary  
18 may by regulations prescribe.

19 “(b) EXCEPTIONS.—Subsection (a) shall not apply  
20 to—

21 “(1) CASH.—Any gift of cash.

22 “(2) GIFTS TO CHARITY.—Any gift to an orga-  
23 nization described in section 501(c) and exempt  
24 from tax under section 501(a) but only if no interest  
25 in the property is held for the benefit of any person  
26 other than such an organization.

1           “(3) WAIVER OF CERTAIN PENSION RIGHTS in-  
2           dividual waives, before the death of a participant,  
3           any survivor benefit, or right to such benefit, under  
4           section 401(a)(11) or 417, subsection (a) shall not  
5           apply to such waiver.

6           “(4) REPORTING ELSEWHERE.—Any gift re-  
7           quired to be reported to the Secretary under any  
8           other provision of this title.

9           “(c) STATEMENTS TO BE FURNISHED TO CERTAIN  
10          PERSONS.—Every person required to make a return under  
11          subsection (a) shall furnish to each person whose name  
12          is required to be set forth in such return a written state-  
13          ment showing—

14                 “(1) the name, address, and phone number of  
15                 the person required to make such return, and

16                 “(2) the information specified in subsection (a)  
17                 with respect to property received by the person re-  
18                 quired to receive such statement.

19          The written statement required under the preceding sen-  
20          tence shall be furnished on or before January 31 of the  
21          year following the calendar year for which the return  
22          under subsection (a) was required to be made.”.

23                 (2) TIME FOR FILING SECTION 6018 RE-  
24          TURNS.—

1 (A) RETURNS RELATING TO LARGE TRANS-  
2 FERS AT DEATH.—Subsection (a) of section  
3 6075 is amended to read as follows:

4 “(a) RETURNS RELATING TO LARGE TRANSFERS AT  
5 DEATH.—The return required by section 6018 with re-  
6 spect to a decedent shall be filed with the return of the  
7 tax imposed by chapter 1 for the decedent’s last taxable  
8 year or such later date specified in regulations prescribed  
9 by the Secretary.”.

10 (B) RETURNS RELATING TO LARGE LIFE-  
11 TIME GIFTS.—

12 (i) The heading for section 6075(b) is  
13 amended to read as follows:

14 “(b) RETURNS RELATING TO LARGE LIFETIME  
15 GIFTS.—”.

16 (ii) Paragraph (1) of section 6075(b)  
17 is amended by striking “(relating to gift  
18 taxes)” and inserting “(relating to returns  
19 relating to large lifetime gifts)”.

20 (iii) Paragraph (3) of section 6075(b)  
21 is amended—

22 (I) by striking “ESTATE TAX RE-  
23 TURN” and inserting “SECTION 6018  
24 RETURN”, and

1 (II) by striking “(relating to es-  
2 tate tax returns)” and inserting “(re-  
3 lating to returns relating to large  
4 transfers at death)”.

5 (3) PENALTIES.—Part I of subchapter B of  
6 chapter 68 (relating to assessable penalties) is  
7 amended by adding at the end the following new sec-  
8 tion:

9 **“SEC. 6716. FAILURE TO FILE INFORMATION WITH RESPECT**  
10 **TO CERTAIN TRANSFERS AT DEATH AND**  
11 **GIFTS.**

12 “(a) INFORMATION REQUIRED TO BE FURNISHED  
13 TO THE SECRETARY.—Any person required to furnish any  
14 information under section 6018 or 6019 who fails to fur-  
15 nish such information on the date prescribed therefor (de-  
16 termined with regard to any extension of time for filing)  
17 shall pay a penalty of \$10,000 (\$500 in the case of infor-  
18 mation required to be furnished under section 6018(b)(2)  
19 or 6019) for each such failure.

20 “(b) INFORMATION REQUIRED TO BE FURNISHED  
21 TO BENEFICIARIES.—Any person required to furnish in  
22 writing to each person described in section 6018(e) or  
23 6019(c) the information required under such section who  
24 fails to furnish such information shall pay a penalty of  
25 \$50 for each such failure.

1       “(c) REASONABLE CAUSE EXCEPTION.—No penalty  
2 shall be imposed under subsection (a) or (b) with respect  
3 to any failure if it is shown that such failure is due to  
4 reasonable cause.

5       “(d) INTENTIONAL DISREGARD.—If any failure  
6 under subsection (a) or (b) is due to intentional disregard  
7 of the requirements under sections 6018 and 6019, the  
8 penalty under such subsection shall be 5 percent of the  
9 fair market value (as of the date of death or, in the case  
10 of section 6019, the date of the gift) of the property with  
11 respect to which the information is required.

12       “(e) DEFICIENCY PROCEDURES NOT TO APPLY.—  
13 Subchapter B of chapter 63 (relating to deficiency proce-  
14 dures for income, estate, gift, and certain excise taxes)  
15 shall not apply in respect of the assessment or collection  
16 of any penalty imposed by this section.”.

17               (4) CLERICAL AMENDMENTS.—

18                       (A) The table of sections for part I of sub-  
19 chapter B of chapter 68 is amended by adding  
20 at the end the following new item:

“Sec. 6716. Failure to file information with respect to certain  
transfers at death and gifts.”.

21                       (B) The item relating to subpart C in the  
22 table of subparts for part II of subchapter A of  
23 chapter 61 is amended to read as follows:

“Subpart C. Returns relating to transfers during life or at  
death.”.

1 (c) EXCLUSION OF GAIN ON SALE OF PRINCIPAL  
 2 RESIDENCE MADE AVAILABLE TO HEIR OF DECEDENT  
 3 IN CERTAIN CASES.—Subsection (d) of section 121 (relat-  
 4 ing to exclusion of gain from sale of principal residence)  
 5 is amended by adding at the end the following new para-  
 6 graph:

7 “(9) PROPERTY ACQUIRED FROM A DECE-  
 8 DENT.—The exclusion under this section shall apply  
 9 to property sold by—

10 “(A) the estate of a decedent, and

11 “(B) any individual who acquired such  
 12 property from the decedent (within the meaning  
 13 of section 1022),

14 determined by taking into account the ownership  
 15 and use by the decedent.”.

16 (d) TRANSFERS OF APPRECIATED CARRYOVER BASIS  
 17 PROPERTY TO SATISFY PECUNIARY BEQUEST.—

18 (1) IN GENERAL.—Section 1040 (relating to  
 19 transfer of certain farm, etc., real property) is  
 20 amended to read as follows:

21 **“SEC. 1040. USE OF APPRECIATED CARRYOVER BASIS**  
 22 **PROPERTY TO SATISFY PECUNIARY BE-**  
 23 **QUEST.**

24 “(a) IN GENERAL.—If the executor of the estate of  
 25 any decedent satisfies the right of any person to receive

1 a pecuniary bequest with appreciated property, then gain  
2 on such exchange shall be recognized to the estate only  
3 to the extent that, on the date of such exchange, the fair  
4 market value of such property exceeds such value on the  
5 date of death.

6 “(b) SIMILAR RULE FOR CERTAIN TRUSTS.—To the  
7 extent provided in regulations prescribed by the Secretary,  
8 a rule similar to the rule provided in subsection (a) shall  
9 apply where—

10 “(1) by reason of the death of the decedent, a  
11 person has a right to receive from a trust a specific  
12 dollar amount which is the equivalent of a pecuniary  
13 bequest, and

14 “(2) the trustee of a trust satisfies such right  
15 with property.

16 “(c) BASIS OF PROPERTY ACQUIRED IN EXCHANGE  
17 DESCRIBED IN SUBSECTION (a) OR (b).—The basis of  
18 property acquired in an exchange with respect to which  
19 gain realized is not recognized by reason of subsection (a)  
20 or (b) shall be the basis of such property immediately be-  
21 fore the exchange increased by the amount of the gain rec-  
22 ognized to the estate or trust on the exchange.”.

23 (2) The item relating to section 1040 in the  
24 table of sections for part III of subchapter O of  
25 chapter 1 is amended to read as follows:

“Sec. 1040. Use of appreciated carryover basis property to satisfy pecuniary bequest.”.

1           (e) ANTI-ABUSE RULES.—Section 7701 is amended  
2 by redesignating subsection (n) as subsection (o) and by  
3 inserting after subsection (m) the following new sub-  
4 section:

5           “(n) PURPORTED GIFTS MAY BE DISREGARDED.—  
6 For purposes of subtitle A, the Secretary may treat a  
7 transfer which purports to be a gift as having never been  
8 transferred if, in connection with such transfer—

9                   “(1)(A) the transferor (or any person related to  
10 or designated by the transferor or such person) has  
11 received anything of value in connection with such  
12 transfer from the transferee directly or indirectly, or

13                   “(B) there is an understanding or expectation  
14 that the transferor (or such person) will receive any-  
15 thing of value in connection with such transfer from  
16 the transferee directly or indirectly, and

17                   “(2) the Secretary determines that such treat-  
18 ment is appropriate to prevent avoidance of tax im-  
19 posed by subtitle A.”.

20           (f) MISCELLANEOUS AMENDMENTS RELATED TO  
21 CARRYOVER BASIS.—

22                   (1) RECOGNITION OF GAIN ON TRANSFERS TO  
23 NONRESIDENTS.—

1           (A) Subsection (a) of section 684 is  
2 amended by inserting “or to a nonresident not  
3 a citizen of the United States” after “or trust”.

4           (B) Subsection (b) of section 684 is  
5 amended by striking “any person” and insert-  
6 ing “any United States person”.

7           (C) The section heading for section 684 is  
8 amended by inserting “**AND NONRESIDENT**  
9 **ALIENS**” after “**ESTATES**”.

10           (D) The item relating to section 684 in the  
11 table of sections for subpart F of part I of sub-  
12 chapter J of chapter 1 is amended by inserting  
13 “and nonresident aliens” after “estates”.

14           (2) CAPITAL GAIN TREATMENT FOR INHERITED  
15 ART WORK OR SIMILAR PROPERTY.—

16           (A) IN GENERAL.—Subparagraph (C) of  
17 section 1221(a)(3) (defining capital asset) is  
18 amended by inserting “(other than by reason of  
19 section 1022)” after “is determined”.

20           (B) COORDINATION WITH SECTION 170.—  
21 Paragraph (1) of section 170(e) (relating to  
22 certain contributions of ordinary income and  
23 capital gain property) is amended by adding at  
24 the end the following: “For purposes of this  
25 paragraph, the determination of whether prop-

1           erty is a capital asset shall be made without re-  
2           gard to the exception contained in section  
3           1221(a)(3)(C) for basis determined under sec-  
4           tion 1022.”.

5           (3) DEFINITION OF EXECUTOR.—Section  
6           7701(a) (relating to definitions) is amended by add-  
7           ing at the end the following:

8           “(47) EXECUTOR.—The term ‘executor’ means  
9           the executor or administrator of the decedent, or, if  
10          there is no executor or administrator appointed,  
11          qualified, and acting within the United States, then  
12          any person in actual or constructive possession of  
13          any property of the decedent.”.

14          (4) CERTAIN TRUSTS.—Subparagraph (A) of  
15          section 4947(a)(2) is amended by inserting  
16          “642(e),” after “170(f)(2)(B),”.

17          (5) OTHER AMENDMENTS.—

18                (A) Section 1246 is amended by striking  
19                subsection (e).

20                (B) Subsection (e) of section 1291 is  
21                amended—

22                    (i) by striking “(e),”; and

23                    (ii) by striking “; except that” and all  
24                    that follows and inserting a period.

1 (C) Section 1296 is amended by striking  
2 subsection (i).

3 (6) CLERICAL AMENDMENT.—The table of sec-  
4 tions for part II of subchapter O of chapter 1 is  
5 amended by inserting after the item relating to sec-  
6 tion 1021 the following new item:

“Sec. 1022. Treatment of property acquired from a decedent  
dying after December 31, 2010.”.

7 (g) EFFECTIVE DATE.—

8 (1) IN GENERAL.—Except as provided in para-  
9 graph (2), the amendments made by this section  
10 shall apply to estates of decedents dying after De-  
11 cember 31, 2010.

12 (2) PURPORTED GIFTS, ETC.—The amendments  
13 made by subsections (e) and (f)(1) shall apply to  
14 transfers after December 31, 2010.

15 (3) SECTION 4947.—The amendment made by  
16 subsection (f)(4) shall apply to deductions for tax-  
17 able years beginning after December 31, 2010.

18 (h) STUDY.—The Secretary of the Treasury or the  
19 Secretary’s delegate shall conduct a study of—

20 (1) opportunities for avoidance of the income  
21 tax, if any; and

22 (2) potential increases in income tax revenues,  
23 by reason of the enactment of this Act. The study shall  
24 be submitted to the Committee on Ways and Means of

1 the House of Representatives and the Committee on Fi-  
2 nance of the Senate not later than December 31, 2002.

3 **TITLE V—CONSERVATION**  
4 **EASEMENTS**

5 **SEC. 501. EXPANSION OF ESTATE TAX RULE FOR CON-**  
6 **SERVATION EASEMENTS.**

7 (a) WHERE LAND IS LOCATED.—Clause (i) of sec-  
8 tion 2031(c)(8)(A) (defining land subject to a conserva-  
9 tion easement) is amended—

10 (1) by striking “25 miles” each place it appears  
11 and inserting “50 miles”; and

12 (2) striking “10 miles” and inserting “25  
13 miles”.

14 (b) CLARIFICATION OF DATE FOR DETERMINING  
15 VALUE OF LAND AND EASEMENT.—Section 2031(c)(2)  
16 (defining applicable percentage) is amended by adding at  
17 the end the following new sentence: “The values taken into  
18 account under the preceding sentence shall be such values  
19 as of the date of the contribution referred to in paragraph  
20 (8)(B).”.

21 (c) EFFECTIVE DATE.—The amendments made by  
22 this section shall apply to estates of decedents dying after  
23 December 31, 2000.

1 **TITLE VI—MODIFICATIONS OF**  
2 **GENERATION-SKIPPING**  
3 **TRANSFER TAX**

4 **SEC. 601. DEEMED ALLOCATION OF GST EXEMPTION TO**  
5 **LIFETIME TRANSFERS TO TRUSTS; RETRO-**  
6 **ACTIVE ALLOCATIONS.**

7 (a) IN GENERAL.—Section 2632 (relating to special  
8 rules for allocation of GST exemption) is amended by re-  
9 designating subsection (c) as subsection (e) and by insert-  
10 ing after subsection (b) the following new subsections:

11 “(c) DEEMED ALLOCATION TO CERTAIN LIFETIME  
12 TRANSFERS TO GST TRUSTS.—

13 “(1) IN GENERAL.—If any individual makes an  
14 indirect skip during such individual’s lifetime, any  
15 unused portion of such individual’s GST exemption  
16 shall be allocated to the property transferred to the  
17 extent necessary to make the inclusion ratio for such  
18 property zero. If the amount of the indirect skip ex-  
19 ceeds such unused portion, the entire unused portion  
20 shall be allocated to the property transferred.

21 “(2) UNUSED PORTION.—For purposes of para-  
22 graph (1), the unused portion of an individual’s  
23 GST exemption is that portion of such exemption  
24 which has not previously been—

25 “(A) allocated by such individual,

1           “(B) treated as allocated under subsection  
2           (b) with respect to a direct skip occurring dur-  
3           ing or before the calendar year in which the in-  
4           direct skip is made, or

5           “(C) treated as allocated under paragraph  
6           (1) with respect to a prior indirect skip.

7           “(3) DEFINITIONS.—

8           “(A) INDIRECT SKIP.—For purposes of  
9           this subsection, the term ‘indirect skip’ means  
10          any transfer of property (other than a direct  
11          skip) subject to the tax imposed by chapter 12  
12          made to a GST trust.

13          “(B) GST TRUST.—The term ‘GST trust’  
14          means a trust that could have a generation-  
15          skipping transfer with respect to the transferor  
16          unless—

17                  “(i) the trust instrument provides that  
18                  more than 25 percent of the trust corpus  
19                  must be distributed to or may be with-  
20                  drawn by one or more individuals who are  
21                  non-skip persons—

22                          “(I) before the date that the indi-  
23                          vidual attains age 46,

24                          “(II) on or before one or more  
25                          dates specified in the trust instrument

1 that will occur before the date that  
2 such individual attains age 46, or

3 “(III) upon the occurrence of an  
4 event that, in accordance with regula-  
5 tions prescribed by the Secretary, may  
6 reasonably be expected to occur before  
7 the date that such individual attains  
8 age 46,

9 “(ii) the trust instrument provides  
10 that more than 25 percent of the trust cor-  
11 pus must be distributed to or may be with-  
12 drawn by one or more individuals who are  
13 non-skip persons and who are living on the  
14 date of death of another person identified  
15 in the instrument (by name or by class)  
16 who is more than 10 years older than such  
17 individuals,

18 “(iii) the trust instrument provides  
19 that, if one or more individuals who are  
20 non-skip persons die on or before a date or  
21 event described in clause (i) or (ii), more  
22 than 25 percent of the trust corpus either  
23 must be distributed to the estate or estates  
24 of one or more of such individuals or is  
25 subject to a general power of appointment

1 exercisable by one or more of such individ-  
2 uals,

3 “(iv) the trust is a trust any portion  
4 of which would be included in the gross es-  
5 tate of a non-skip person (other than the  
6 transferor) if such person died immediately  
7 after the transfer,

8 “(v) the trust is a charitable lead an-  
9 nuity trust (within the meaning of section  
10 2642(e)(3)(A)) or a charitable remainder  
11 annuity trust or a charitable remainder  
12 unitrust (within the meaning of section  
13 664(d)), or

14 “(vi) the trust is a trust with respect  
15 to which a deduction was allowed under  
16 section 2522 for the amount of an interest  
17 in the form of the right to receive annual  
18 payments of a fixed percentage of the net  
19 fair market value of the trust property (de-  
20 termined yearly) and which is required to  
21 pay principal to a non-skip person if such  
22 person is alive when the yearly payments  
23 for which the deduction was allowed termi-  
24 nate.

1 For purposes of this subparagraph, the value of  
2 transferred property shall not be considered to  
3 be includible in the gross estate of a non-skip  
4 person or subject to a right of withdrawal by  
5 reason of such person holding a right to with-  
6 draw so much of such property as does not ex-  
7 ceed the amount referred to in section 2503(b)  
8 with respect to any transferor, and it shall be  
9 assumed that powers of appointment held by  
10 non-skip persons will not be exercised.

11 “(4) AUTOMATIC ALLOCATIONS TO CERTAIN  
12 GST TRUSTS.—For purposes of this subsection, an  
13 indirect skip to which section 2642(f) applies shall  
14 be deemed to have been made only at the close of  
15 the estate tax inclusion period. The fair market  
16 value of such transfer shall be the fair market value  
17 of the trust property at the close of the estate tax  
18 inclusion period.

19 “(5) APPLICABILITY AND EFFECT.—

20 “(A) IN GENERAL.—An individual—

21 “(i) may elect to have this subsection  
22 not apply to—

23 “(I) an indirect skip, or

1                   “(II) any or all transfers made  
2                   by such individual to a particular  
3                   trust, and

4                   “(ii) may elect to treat any trust as a  
5                   GST trust for purposes of this subsection  
6                   with respect to any or all transfers made  
7                   by such individual to such trust.

8                   “(B) ELECTIONS.—

9                   “(i) ELECTIONS WITH RESPECT TO  
10                  INDIRECT SKIPS.—An election under sub-  
11                  paragraph (A)(i)(I) shall be deemed to be  
12                  timely if filed on a timely filed gift tax re-  
13                  turn for the calendar year in which the  
14                  transfer was made or deemed to have been  
15                  made pursuant to paragraph (4) or on  
16                  such later date or dates as may be pre-  
17                  scribed by the Secretary.

18                  “(ii) OTHER ELECTIONS.—An election  
19                  under clause (i)(II) or (ii) of subparagraph  
20                  (A) may be made on a timely filed gift tax  
21                  return for the calendar year for which the  
22                  election is to become effective.

23                  “(d) RETROACTIVE ALLOCATIONS.—

24                  “(1) IN GENERAL.—If—

1           “(A) a non-skip person has an interest or  
2           a future interest in a trust to which any trans-  
3           fer has been made,

4           “(B) such person—

5                   “(i) is a lineal descendant of a grand-  
6                   parent of the transferor or of a grand-  
7                   parent of the transferor’s spouse or former  
8                   spouse, and

9                   “(ii) is assigned to a generation below  
10                  the generation assignment of the trans-  
11                  feror, and

12                  “(C) such person predeceases the trans-  
13                  feror,

14           then the transferor may make an allocation of any  
15           of such transferor’s unused GST exemption to any  
16           previous transfer or transfers to the trust on a  
17           chronological basis.

18           “(2) SPECIAL RULES.—If the allocation under  
19           paragraph (1) by the transferor is made on a gift  
20           tax return filed on or before the date prescribed by  
21           section 6075(b) for gifts made within the calendar  
22           year within which the non-skip person’s death  
23           occurred—

24                   “(A) the value of such transfer or trans-  
25                  fers for purposes of section 2642(a) shall be de-

1           terminated as if such allocation had been made  
2           on a timely filed gift tax return for each cal-  
3           endar year within which each transfer was  
4           made,

5           “(B) such allocation shall be effective im-  
6           mediately before such death, and

7           “(C) the amount of the transferor’s unused  
8           GST exemption available to be allocated shall  
9           be determined immediately before such death.

10          “(3) FUTURE INTEREST.—For purposes of this  
11          subsection, a person has a future interest in a trust  
12          if the trust may permit income or corpus to be paid  
13          to such person on a date or dates in the future.”.

14          (b) CONFORMING AMENDMENT.—Paragraph (2) of  
15          section 2632(b) is amended by striking “with respect to  
16          a prior direct skip” and inserting “or subsection (c)(1)”.

17          (c) EFFECTIVE DATES.—

18                 (1) DEEMED ALLOCATION.—Section 2632(c) of  
19          the Internal Revenue Code of 1986 (as added by  
20          subsection (a)), and the amendment made by sub-  
21          section (b), shall apply to transfers subject to chap-  
22          ter 11 or 12 made after December 31, 2000, and to  
23          estate tax inclusion periods ending after December  
24          31, 2000.

1           (2) RETROACTIVE ALLOCATIONS.—Section  
2           2632(d) of the Internal Revenue Code of 1986 (as  
3           added by subsection (a)) shall apply to deaths of  
4           non-skip persons occurring after December 31,  
5           2000.

6 **SEC. 602. SEVERING OF TRUSTS.**

7           (a) IN GENERAL.—Subsection (a) of section 2642  
8           (relating to inclusion ratio) is amended by adding at the  
9           end the following new paragraph:

10           “(3) SEVERING OF TRUSTS.—

11           “(A) IN GENERAL.—If a trust is severed in  
12           a qualified severance, the trusts resulting from  
13           such severance shall be treated as separate  
14           trusts thereafter for purposes of this chapter.

15           “(B) QUALIFIED SEVERANCE.—For pur-  
16           poses of subparagraph (A)—

17           “(i) IN GENERAL.—The term ‘quali-  
18           fied severance’ means the division of a sin-  
19           gle trust and the creation (by any means  
20           available under the governing instrument  
21           or under local law) of two or more trusts  
22           if—

23           “(I) the single trust was divided  
24           on a fractional basis, and

1                   “(II) the terms of the new trusts,  
2                   in the aggregate, provide for the same  
3                   succession of interests of beneficiaries  
4                   as are provided in the original trust.

5                   “(ii) TRUSTS WITH INCLUSION RATIO  
6                   GREATER THAN ZERO.—If a trust has an  
7                   inclusion ratio of greater than zero and  
8                   less than 1, a severance is a qualified sev-  
9                   erance only if the single trust is divided  
10                  into two trusts, one of which receives a  
11                  fractional share of the total value of all  
12                  trust assets equal to the applicable fraction  
13                  of the single trust immediately before the  
14                  severance. In such case, the trust receiving  
15                  such fractional share shall have an inclu-  
16                  sion ratio of zero and the other trust shall  
17                  have an inclusion ratio of 1.

18                  “(iii) REGULATIONS.—The term  
19                  ‘qualified severance’ includes any other  
20                  severance permitted under regulations pre-  
21                  scribed by the Secretary.

22                  “(C) TIMING AND MANNER OF  
23                  SEVERANCES.—A severance pursuant to this  
24                  paragraph may be made at any time. The Sec-  
25                  retary shall prescribe by forms or regulations

1 the manner in which the qualified severance  
2 shall be reported to the Secretary.”.

3 (b) EFFECTIVE DATE.—The amendment made by  
4 this section shall apply to severances after December 31,  
5 2000.

6 **SEC. 603. MODIFICATION OF CERTAIN VALUATION RULES.**

7 (a) GIFTS FOR WHICH GIFT TAX RETURN FILED OR  
8 DEEMED ALLOCATION MADE.—Paragraph (1) of section  
9 2642(b) (relating to valuation rules, etc.) is amended to  
10 read as follows:

11 “(1) GIFTS FOR WHICH GIFT TAX RETURN  
12 FILED OR DEEMED ALLOCATION MADE.—If the allo-  
13 cation of the GST exemption to any transfers of  
14 property is made on a gift tax return filed on or be-  
15 fore the date prescribed by section 6075(b) for such  
16 transfer or is deemed to be made under section 2632  
17 (b)(1) or (c)(1)—

18 “(A) the value of such property for pur-  
19 poses of subsection (a) shall be its value as fi-  
20 nally determined for purposes of chapter 12  
21 (within the meaning of section 2001(f)(2)), or,  
22 in the case of an allocation deemed to have been  
23 made at the close of an estate tax inclusion pe-  
24 riod, its value at the time of the close of the es-  
25 tate tax inclusion period, and

1           “(B) such allocation shall be effective on  
2           and after the date of such transfer, or, in the  
3           case of an allocation deemed to have been made  
4           at the close of an estate tax inclusion period, on  
5           and after the close of such estate tax inclusion  
6           period.”.

7           (b) TRANSFERS AT DEATH.—Subparagraph (A) of  
8           section 2642(b)(2) is amended to read as follows:

9           “(A) TRANSFERS AT DEATH.—If property  
10           is transferred as a result of the death of the  
11           transferor, the value of such property for pur-  
12           poses of subsection (a) shall be its value as fi-  
13           nally determined for purposes of chapter 11; ex-  
14           cept that, if the requirements prescribed by the  
15           Secretary respecting allocation of post-death  
16           changes in value are not met, the value of such  
17           property shall be determined as of the time of  
18           the distribution concerned.”.

19           (c) EFFECTIVE DATE.—The amendments made by  
20           this section shall apply to transfers subject to chapter 11  
21           or 12 of the Internal Revenue Code of 1986 made after  
22           December 31, 2000.

23           **SEC. 604. RELIEF PROVISIONS.**

24           (a) IN GENERAL.—Section 2642 is amended by add-  
25           ing at the end the following new subsection:

1 “(g) RELIEF PROVISIONS.—

2 “(1) RELIEF FROM LATE ELECTIONS.—

3 “(A) IN GENERAL.—The Secretary shall by  
4 regulation prescribe such circumstances and  
5 procedures under which extensions of time will  
6 be granted to make—

7 “(i) an allocation of GST exemption  
8 described in paragraph (1) or (2) of sub-  
9 section (b), and

10 “(ii) an election under subsection  
11 (b)(3) or (c)(5) of section 2632.

12 Such regulations shall include procedures for  
13 requesting comparable relief with respect to  
14 transfers made before the date of the enactment  
15 of this paragraph.

16 “(B) BASIS FOR DETERMINATIONS.—In  
17 determining whether to grant relief under this  
18 paragraph, the Secretary shall take into ac-  
19 count all relevant circumstances, including evi-  
20 dence of intent contained in the trust instru-  
21 ment or instrument of transfer and such other  
22 factors as the Secretary deems relevant. For  
23 purposes of determining whether to grant relief  
24 under this paragraph, the time for making the

1 allocation (or election) shall be treated as if not  
2 expressly prescribed by statute.

3 “(2) SUBSTANTIAL COMPLIANCE.—An alloca-  
4 tion of GST exemption under section 2632 that  
5 demonstrates an intent to have the lowest possible  
6 inclusion ratio with respect to a transfer or a trust  
7 shall be deemed to be an allocation of so much of  
8 the transferor’s unused GST exemption as produces  
9 the lowest possible inclusion ratio. In determining  
10 whether there has been substantial compliance, all  
11 relevant circumstances shall be taken into account,  
12 including evidence of intent contained in the trust  
13 instrument or instrument of transfer and such other  
14 factors as the Secretary deems relevant.”.

15 (b) EFFECTIVE DATES.—

16 (1) RELIEF FROM LATE ELECTIONS.—Section  
17 2642(g)(1) of the Internal Revenue Code of 1986  
18 (as added by subsection (a)) shall apply to requests  
19 pending on, or filed after, December 31, 2000.

20 (2) SUBSTANTIAL COMPLIANCE.—Section  
21 2642(g)(2) of such Code (as so added) shall apply  
22 to transfers subject to chapter 11 or 12 of the Inter-  
23 nal Revenue Code of 1986 made after December 31,  
24 2000. No implication is intended with respect to the  
25 availability of relief from late elections or the appli-

1 cation of a rule of substantial compliance on or be-  
2 fore such date.

3 **TITLE VII—EXTENSION OF TIME**  
4 **FOR PAYMENT OF ESTATE TAX**

5 **SEC. 701. INCREASE IN NUMBER OF ALLOWABLE PARTNERS**  
6 **AND SHAREHOLDERS IN CLOSELY HELD**  
7 **BUSINESSES.**

8 (a) IN GENERAL.—Paragraphs (1)(B)(ii), (1)(C)(ii),  
9 and (9)(B)(iii)(I) of section 6166(b) (relating to defini-  
10 tions and special rules) are each amended by striking “15”  
11 and inserting “45”.

12 (b) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to estates of decedents dying after  
14 December 31, 2001.

Passed the House of Representatives April 4, 2001.

Attest:

*Clerk.*

107TH CONGRESS  
1ST SESSION

**H. R. 8**

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**AN ACT**

To amend the Internal Revenue Code of 1986 to phaseout the estate and gift taxes over a 10-year period, and for other purposes.