

FAIR TREATMENT FOR ALL GIFTS ACT

APRIL 13, 2015.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RYAN of Wisconsin, from the Committee on Ways and Means, submitted the following

R E P O R T

[To accompany H.R. 1104]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 1104) to amend the Internal Revenue Code of 1986 to provide a deduction from the gift tax for gifts made to certain exempt organizations, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
I. SUMMARY AND BACKGROUND	2
A. Purpose and Summary	2
B. Background and Need for Legislation	2
C. Legislative History	3
II. EXPLANATION OF THE BILL	3
A. Deduction from Gift Tax for Gifts Made to Certain Exempt Organizations (sec. 2 of the bill and sec. 2522(a) of the Code)	3
III. VOTES OF THE COMMITTEE	6
IV. BUDGET EFFECTS OF THE BILL	6
A. Committee Estimate of Budgetary Effects	6
B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority	6
C. Cost Estimate Prepared by the Congressional Budget Office	7
V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE	7
A. Committee Oversight Findings and Recommendations	7
B. Statement of General Performance Goals and Objectives	8
C. Information Relating to Unfunded Mandates	8
D. Applicability of House Rule XXI 5(b)	8
E. Tax Complexity Analysis	8
F. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits	8

G. Duplication of Federal Programs	9
H. Disclosure of Directed Rule Makings	9
VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED	9
A. Text of Existing Law Amended or Repealed by the Bill, as Reported	9
B. Changes in Existing Law Proposed by the Bill, as Reported	13

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Fair Treatment for All Gifts Act”.

SEC. 2. DEDUCTION FROM GIFT TAX FOR GIFTS MADE TO CERTAIN EXEMPT ORGANIZATIONS.

(a) **IN GENERAL.**—Section 2522(a) of the Internal Revenue Code of 1986 is amended by striking the period at the end of paragraph (4) and inserting a semicolon and by inserting after paragraph (4) the following new paragraph:

“(5) an organization described in paragraph (4), (5), or (6) of section 501(c) and exempt from tax under section 501(a).”.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall apply to gifts made after the date of the enactment of this Act.

(c) **NO INFERENCE.**—Nothing in the amendments made by subsection (a) shall be construed to create any inference with respect to whether any transfer of property (whether made before, on, or after the date of the enactment of this Act) to an organization described in paragraph (4), (5), or (6) of section 501(c) of the Internal Revenue Code of 1986 is a transfer of property by gift for purposes of chapter 12 of such Code.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

H.R. 1104, reported by the Committee on Ways and Means, provides that donations to organizations exempt from tax under sections 501(c)(4), (c)(5), and (c)(6) of the Internal Revenue Code (the “Code”) are treated as gifts for Federal tax purposes. However, such gifts are deductible from total gifts made and not included as taxable gifts for the calendar year. Thus, donations are effectively exempt from the Federal gift tax. The legislation applies to gifts made after the date of enactment. The bill further provides that no inference is to be made with regard to any transfer of property made before, on or after the date of enactment.

B. BACKGROUND AND NEED FOR LEGISLATION

The Committee believes that it is important to clarify the treatment of donations to organizations exempt from tax under Code section 501(c)(4) (social welfare organizations), (c)(5) (unions), or (c)(6) (trade associations). While these donations are not eligible for a charitable deduction, it has been unclear under current law whether such transfers should be treated as gifts, which would make the donor liable for the gift tax. In 2011, the IRS began to audit taxpayers for failure to file a gift tax return on transfers to section 501(c)(4) organizations, although it later abandoned such audits. The Committee believes that transfers to organizations exempt from tax under Code section 501(c)(4) (social welfare organizations), (c)(5) (unions), or (c)(6) (trade associations) should be treated as gifts. However, such transfers should be deducted from total gifts made for the year when determining the amount of taxable gifts. Thus, such transfers would not be subject to the gift tax. The bill clarifies this area of tax law and provides certainty to taxpayers.

C. LEGISLATIVE HISTORY

Background

H.R. 1104 was introduced on February 26, 2015, and was referred to the Committee on Ways and Means.

Committee action

The Committee on Ways and Means marked up H.R. 1104, the “Fair Treatment for All Gifts Act,” on March 25, 2015, and ordered the bill, as amended, favorably reported (with a quorum being present).

Committee hearings

The need for clarification of the treatment of non-deductible donations to certain tax-exempt organizations was discussed during multiple Committee hearings during the 113th Congress:

- Full Committee Hearing on IRS Targeting Conservative Groups (May 17, 2013).
- Full Committee Hearing Organizations Targeted by Internal Revenue Service for Their Personal Beliefs (June 4, 2013).
- Full Committee Hearing on the Status of Internal Revenue Service’s Review of Taxpayer Targeting Practices (June 27, 2013).

II. EXPLANATION OF THE BILL

A. DEDUCTION FROM GIFT TAX FOR GIFTS MADE TO CERTAIN EX-EMPT ORGANIZATIONS (SEC. 2 OF THE BILL AND SEC. 2522(a) OF THE CODE)

PRESENT LAW

Overview

The Code imposes a tax for each calendar year on the transfer of property by gift during such year by any individual, whether a resident or nonresident of the United States.¹ The amount of taxable gifts for a calendar year is determined by subtracting from the total amount of gifts made during the year: (1) the gift tax annual exclusion (described below); and (2) allowable deductions.

Gift tax for the current taxable year is determined by: (1) computing a tentative tax on the combined amount of all taxable gifts for the current and all prior calendar years using the common gift tax and estate tax rate table; (2) computing a tentative tax only on all prior-year gifts; (3) subtracting the tentative tax on prior-year gifts from the tentative tax computed for all years to arrive at the portion of the total tentative tax attributable to current-year gifts; and, finally, (4) subtracting the amount of unified credit not consumed by prior-year gifts.

*Unified credit (exemption) and tax rates**Unified credit*

A unified credit is available with respect to taxable transfers by gift and at death.² The unified credit offsets tax, computed using

¹Sec. 2501(a).

²Sec. 2010.

the applicable estate and gift tax rates, on a specified amount of transfers, referred to as the applicable exclusion amount, or exemption amount. The exemption amount was set at \$5 million for 2011 and is indexed for inflation for later years.³ For 2015, the inflation-indexed exemption amount is \$5.43 million.⁴ Exemption used during life to offset taxable gifts reduces the amount of exemption that remains at death to offset the value of a decedent's estate. An election is available under which exemption that is not used by a decedent may be used by the decedent's surviving spouse (exemption portability).

Common tax rate table

A common tax-rate table with a top marginal tax rate of 40 percent is used to compute gift tax and estate tax. The 40 percent rate applies to transfers in excess of \$1 million (to the extent not exempt). Because the exemption amount currently shields the first \$5.43 million in gifts and bequests from tax, transfers in excess of the exemption amount generally are subject to tax at the highest marginal 40-percent rate.

Transfers by gift

The gift tax applies to a transfer by gift regardless of whether: (1) the transfer is made outright or in trust; (2) the gift is direct or indirect; or (3) the property is real or personal, tangible or intangible.⁵ For gift tax purposes, the value of a gift of property is the fair market value of the property at the time of the gift.⁶ Where property is transferred for less than full consideration, the amount by which the value of the property exceeds the value of the consideration is considered a gift and is included in computing the total amount of a taxpayer's gifts for a calendar year.⁷

For a gift to occur, a donor generally must relinquish dominion and control over donated property. For example, if a taxpayer transfers assets to a trust established for the benefit of his or her children, but retains the right to revoke the trust, the taxpayer may not have made a completed gift, because the taxpayer has retained dominion and control over the transferred assets. A completed gift made in trust, on the other hand, often is treated as a gift to the trust beneficiaries.

By reason of statute, certain transfers are not treated as transfers by gift for gift tax purposes. These include, for example, certain transfers for educational and medical purposes⁸ and transfers to section 527 political organizations.⁹

Under present law, there is no explicit exception from the gift tax for a transfer to a tax-exempt organization described in section 501(c)(4) (generally, social welfare organizations), 501(c)(5) (generally, labor and certain other organizations), or section 501(c)(6) (generally, trade associations and business leagues).

³For 2011 and later years, the gift and estate taxes were reunified, meaning that the gift tax exemption amount was increased to equal the estate tax exemption amount.

⁴For 2015, the \$5.43 exemption amount results in a unified credit of \$2,117,800, after applying the applicable rates set forth in section 2001(c).

⁵Sec. 2511(a).

⁶Sec. 2512(a).

⁷Sec. 2512(b).

⁸Sec. 2503(e).

⁹Sec. 2501(a)(4).

Taxable gifts

As stated above, the amount of a taxpayer's taxable gifts for the year is determined by subtracting from the total amount of the taxpayer's gifts for the year the gift tax annual exclusion and any available deductions.

Gift tax annual exclusion

Under present law, donors of lifetime gifts are provided an annual exclusion of \$14,000 per donee in 2015 (indexed for inflation from the 1997 annual exclusion amount of \$10,000) for gifts of present interests in property during the taxable year.¹⁰ If the non-donor spouse consents to split the gift with the donor spouse, then the annual exclusion is \$28,000 per donee in 2015. In general, unlimited transfers between spouses are permitted without imposition of a gift tax. Special rules apply to the contributions to a qualified tuition program ("529 Plan") including an election to treat a contribution that exceeds the annual exclusion as a contribution made ratably over a five-year period beginning with the year of the contribution.¹¹

Transfers between spouses

A 100-percent marital deduction generally is permitted for the value of property transferred between spouses.¹²

Transfers to charity

Contributions to section 501(c)(3) charitable organizations and certain other organizations may be deducted from the value of a gift for Federal gift tax purposes.¹³ The effect of the deduction generally is to remove the full fair market value of assets transferred to charity from the gift tax base; unlike the income tax charitable deduction, there are no percentage limits on the deductible amount. A charitable contribution of a partial interest in property, such as a remainder or future interest, generally is not deductible for gift tax purposes.¹⁴

REASONS FOR CHANGE

Until recently, the IRS had not attempt to impose gift tax on transfers to organizations that are exempt from tax under section 501(c)(4), (5), or (6) of the Code. In 2011, the Committee found that certain donors to section 501(c)(4) organizations had received notices from the IRS that they would be audited for potential gift tax liability. After the Committee commenced oversight of this action, the IRS announced that it was suspending this practice. The Committee is concerned that the threat of an audit or imposition of gift tax could have a chilling effect on the making of contributions that are used to support legitimate exempt purposes. The Committee therefore believes it is necessary to clarify that payments to section 501(c)(4), (5), and (6) organizations are not subject to gift tax.

¹⁰ Sec. 2503(b).

¹¹ Sec. 529(c)(2).

¹² Sec. 2523.

¹³ Sec. 2522.

¹⁴ Sec. 2522(c)(2).

EXPLANATION OF PROVISION

Under the provision, a transfer to a tax-exempt organization described in section 501(c)(4), 501(c)(5), or 501(c)(6) is deductible in computing taxable gifts for a calendar year.

EFFECTIVE DATE

The provision is effective for gifts made after the date of enactment. The provision shall not be construed to create an inference with respect to whether any transfer of property to such an organization, whether made before, on or after the date of enactment, is a transfer by gift for gift tax purposes.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of H.R. 1104, the “Fair Treatment for All Gifts Act” on March 25, 2015.

The Chairman’s amendment in the nature of a substitute was adopted by a voice vote (with a quorum being present).

The bill, H.R. 1104, as amended, was ordered favorably reported to the House of Representatives by a voice vote (with a quorum being present).

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, H.R. 1104, as reported.

The bill, as reported, is estimated to have no effect on Federal budget receipts for fiscal years 2015–2025.

Pursuant to clause 8 of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: the gross budgetary effect (before incorporating macroeconomic effects) in any fiscal year is less than 0.25 percent of the current projected gross domestic product of the United States for that fiscal year; therefore, the bill is not “major legislation” for purposes of requiring that the estimate include the budgetary effects of changes in economic output, employment, capital stock and other macroeconomic variables.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES BUDGET AUTHORITY

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that there are no new or increased tax expenditures.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET
OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 2, 2015.

Hon. PAUL RYAN,
*Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1104, the Fair Treatment for All Gifts Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Logan Timmerhoff.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 1104—Fair Treatment for All Gifts Act

H.R. 1104 would amend the Internal Revenue Code to explicitly provide that donations to certain tax-exempt organizations would be deductible in computing taxable gifts for purposes of estate and gift taxation. The tax-exempt organizations include social welfare and other organizations described in the Internal Revenue Code under section 501(c)(4), labor and other organizations described under section 501(c)(5), and trade associations and similar organizations described under section 501(c)(6). The bill would codify the existing practices of the Internal Revenue Service in administering the tax law applicable to such donations.

The staff of the Joint Committee on Taxation (JCT) estimates that enacting H.R. 1104 would have no budgetary effect. Because enacting H.R. 1104 would not affect direct spending or revenues, pay-as-you-go procedures do not apply.

JCT has determined that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Logan Timmerhoff. The estimate was approved by David Weiner, Assistant Director for Tax Analysis.

**V. OTHER MATTERS TO BE DISCUSSED UNDER THE
RULES OF THE HOUSE**

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was as a result of the Committee's review of the provisions of H.R. 1104 that the Committee concluded that it is appropriate to report the bill, as amended, favorably to the

House of Representatives with the recommendation that the bill do pass.

B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4). The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. APPLICABILITY OF HOUSE RULE XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that “A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present.” The Committee has carefully reviewed the bill, and states that the bill does not involve any Federal income tax rate increases within the meaning of the rule.

E. TAX COMPLEXITY ANALYSIS

The following statement is made pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives. Section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code and that have “widespread applicability” to individuals or small businesses, within the meaning of the rule.

F. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the pro-

visions of the bill, and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

G. DUPLICATION OF FEDERAL PROGRAMS

In compliance with Sec. 3(g)(2) of H. Res. 5 (114th Congress), the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program, (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169).

H. DISCLOSURE OF DIRECTED RULE MAKINGS

In compliance with Sec. 3(i) of H. Res. 5 (114th Congress), the following statement is made concerning directed rule makings: The Committee estimates that the bill requires no directed rule makings within the meaning of such section.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

A. TEXT OF EXISTING LAW AMENDED OR REPEALED BY THE BILL, AS REPORTED

In compliance with clause 3(e)(1)(A) of rule XIII of the Rules of the House of Representatives, the text of each section proposed to be amended or repealed by the bill, as reported, is shown below:

TEXT OF EXISTING LAW AMENDED OR REPEALED BY THE BILL, AS REPORTED

In compliance with clause 3(e)(1)(A) of rule XIII of the Rules of the House of Representatives, the text of each section proposed to be amended or repealed by the bill, as reported, is shown below:

INTERNAL REVENUE CODE OF 1986

* * * * *

Subtitle B—Estate and Gift Taxes

* * * * *

CHAPTER 12—GIFT TAX

* * * * *

Subchapter C—Deductions

* * * * *

SEC. 2522. CHARITABLE AND SIMILAR GIFTS.

(a) **CITIZENS OR RESIDENTS.**—In computing taxable gifts for the calendar year, there shall be allowed as a deduction in the case of a citizen or resident the amount of all gifts made during such year to or for the use of—

(1) the United States, any State, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) a corporation, or trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(3) a fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;

(4) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual.

Rules similar to the rules of section 501(j) shall apply for purposes of paragraph (2).

(b) **NONRESIDENTS.**—In the case of a nonresident not a citizen of the United States, there shall be allowed as a deduction the amount of all gifts made during such year to or for the use of—

(1) the United States, any State, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) a domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(3) a trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encour-

agement of art and the prevention of cruelty to children or animals, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office; but only if such gifts are to be used within the United States exclusively for such purposes;

(4) a fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used within the United States exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;

(5) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual.

(c) **DISALLOWANCE OF DEDUCTIONS IN CERTAIN CASES.—**

(1) No deduction shall be allowed under this section for a gift to or for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

(2) Where a donor transfers an interest in property (other than an interest described in section 170(f)(3)(B)) to a person, or for a use, described in subsection (a) or (b) and an interest in the same property is retained by the donor, or is transferred or has been transferred (for less than an adequate and full consideration in money or money's worth) from the donor to a person, or for a use, not described in subsection (a) or (b), no deduction shall be allowed under this section for the interest which is, or has been transferred to the person, or for the use, described in subsection (a) or (b), unless—

(A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664) or a pooled income fund (described in section 642(c)(5)), or

(B) in the case of any other interest, such interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).

(3) Rules similar to the rules of section 2055(e)(4) shall apply for purposes of paragraph (2).

(4) **Reformations to comply with paragraph (2)**

(A) **IN GENERAL.—**A deduction shall be allowed under subsection (a) in respect of any qualified reformation (within the meaning of section 2055(e)(3)(B)).

(B) **RULES SIMILAR TO SECTION 2055(E)(3) TO APPLY.—**For purposes of this paragraph, rules similar to the rules of section 2055(e)(3) shall apply.

(5) **CONTRIBUTIONS TO DONOR ADVISED FUNDS.—**A deduction otherwise allowed under subsection (a) for any contribution to

a donor advised fund (as defined in section 4966(d)(2)) shall only be allowed if—

(A) the sponsoring organization (as defined in section 4966(d)(1)) with respect to such donor advised fund is not—

(i) described in paragraph (3) or (4) of subsection (a), or

(ii) a type III supporting organization (as defined in section 4943(f)(5)(A)) which is not a functionally integrated type III supporting organization (as defined in section 4943(f)(5)(B)), and

(B) the taxpayer obtains a contemporaneous written acknowledgment (determined under rules similar to the rules of section 170(f)(8)(C)) from the sponsoring organization (as so defined) of such donor advised fund that such organization has exclusive legal control over the assets contributed.

(d) SPECIAL RULE FOR IRREVOCABLE TRANSFERS OF EASEMENTS IN REAL PROPERTY.—A deduction shall be allowed under subsection (a) in respect of any transfer of a qualified real property interest (as defined in section 170(h)(2)(C)) which meets the requirements of section 170(h) (without regard to paragraph (4)(A) thereof).

(e) SPECIAL RULES FOR FRACTIONAL GIFTS.—

(1) DENIAL OF DEDUCTION IN CERTAIN CASES.—

(A) IN GENERAL.—No deduction shall be allowed for a contribution of an undivided portion of a taxpayer's entire interest in tangible personal property unless all interests in the property are held immediately before such contribution by—

(i) the taxpayer, or
(ii) the taxpayer and the donee.

(B) EXCEPTIONS.—The Secretary may, by regulation, provide for exceptions to subparagraph (A) in cases where all persons who hold an interest in the property make proportional contributions of an undivided portion of the entire interest held by such persons.

(2) RECAPTURE OF DEDUCTION IN CERTAIN CASES; ADDITION TO TAX.—

(A) IN GENERAL.—The Secretary shall provide for the recapture of an amount equal to any deduction allowed under this section (plus interest) with respect to any contribution of an undivided portion of a taxpayer's entire interest in tangible personal property—

(i) in any case in which the donor does not contribute all of the remaining interests in such property to the donee (or, if such donee is no longer in existence, to any person described in section 170(c)) on or before the earlier of—

(I) the date that is 10 years after the date of the initial fractional contribution, or

(II) the date of the death of the donor, and (ii) in any case in which the donee has not, during the period beginning on the date of the initial fractional contribution and ending on the date described in clause (i)—

(I) had substantial physical possession of the property, and

(II) used the property in a use which is related to a purpose or function constituting the basis for the organizations' exemption under section 501.

(B) ADDITION TO TAX.—The tax imposed under this chapter for any taxable year for which there is a recapture under subparagraph (A) shall be increased by 10 percent of the amount so recaptured.

(C) INITIAL FRACTIONAL CONTRIBUTION.—For purposes of this paragraph, the term "initial fractional contribution" means, with respect to any donor, the first gift of an undivided portion of the donor's entire interest in any tangible personal property for which a deduction is allowed under subsection (a) or (b).

(f) CROSS REFERENCES.—

(1) For treatment of certain organizations providing child care, see section 501(k).

(2) For exemption of certain gifts to or for the benefit of the United States and for rules of construction with respect to certain bequests, see section 2055(f).

(3) For treatment of gifts to or for the use of Indian tribal governments (or their subdivisions), see section 7871.

* * * * *

B. CHANGES IN EXISTING LAW PROPOSED BY THE BILL, AS REPORTED

In compliance with clause 3(e)(1)(B) of rule XIII of the Rules of the House of Representatives, changes in existing law proposed by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e)(1)(B) of rule XIII of the Rules of the House of Representatives, changes in existing law proposed by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

* * * * *

Subtitle B—Estate and Gift Taxes

* * * * *

CHAPTER 12—GIFT TAX

* * * * *

Subchapter C—Deductions

* * * * *

SEC. 2522. CHARITABLE AND SIMILAR GIFTS.

(a) **CITIZENS OR RESIDENTS.**—In computing taxable gifts for the calendar year, there shall be allowed as a deduction in the case of a citizen or resident the amount of all gifts made during such year to or for the use of—

(1) the United States, any State, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) a corporation, or trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(3) a fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;

(4) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual[.];

(5) *an organization described in paragraph (4), (5), or (6) of section 501(c) and exempt from tax under section 501(a).*

Rules similar to the rules of section 501(j) shall apply for purposes of paragraph (2).

(b) **NONRESIDENTS.**—In the case of a nonresident not a citizen of the United States, there shall be allowed as a deduction the amount of all gifts made during such year to or for the use of—

(1) the United States, any State, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) a domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any

political campaign on behalf of (or in opposition to) any candidate for public office;

(3) a trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office; but only if such gifts are to be used within the United States exclusively for such purposes;

(4) a fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used within the United States exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;

(5) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual.

(c) DISALLOWANCE OF DEDUCTIONS IN CERTAIN CASES.—

(1) No deduction shall be allowed under this section for a gift to or for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

(2) Where a donor transfers an interest in property (other than an interest described in section 170(f)(3)(B)) to a person, or for a use, described in subsection (a) or (b) and an interest in the same property is retained by the donor, or is transferred or has been transferred (for less than an adequate and full consideration in money or money's worth) from the donor to a person, or for a use, not described in subsection (a) or (b), no deduction shall be allowed under this section for the interest which is, or has been transferred to the person, or for the use, described in subsection (a) or (b), unless—

(A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664) or a pooled income fund (described in section 642(c)(5)), or

(B) in the case of any other interest, such interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).

(3) Rules similar to the rules of section 2055(e)(4) shall apply for purposes of paragraph (2).

(4) Reformatations to comply with paragraph (2)

(A) IN GENERAL.—A deduction shall be allowed under subsection (a) in respect of any qualified reformation (within the meaning of section 2055(e)(3)(B)).

(B) RULES SIMILAR TO SECTION 2055(E)(3) TO APPLY.—For purposes of this paragraph, rules similar to the rules of section 2055(e)(3) shall apply.

(5) CONTRIBUTIONS TO DONOR ADVISED FUNDS.—A deduction otherwise allowed under subsection (a) for any contribution to a donor advised fund (as defined in section 4966(d)(2)) shall only be allowed if—

(A) the sponsoring organization (as defined in section 4966(d)(1)) with respect to such donor advised fund is not—

(i) described in paragraph (3) or (4) of subsection (a),
or

(ii) a type III supporting organization (as defined in section 4943(f)(5)(A)) which is not a functionally integrated type III supporting organization (as defined in section 4943(f)(5)(B)), and

(B) the taxpayer obtains a contemporaneous written acknowledgment (determined under rules similar to the rules of section 170(f)(8)(C)) from the sponsoring organization (as so defined) of such donor advised fund that such organization has exclusive legal control over the assets contributed.

(d) SPECIAL RULE FOR IRREVOCABLE TRANSFERS OF EASEMENTS IN REAL PROPERTY.—A deduction shall be allowed under subsection (a) in respect of any transfer of a qualified real property interest (as defined in section 170(h)(2)(C)) which meets the requirements of section 170(h) (without regard to paragraph (4)(A) thereof).

(e) SPECIAL RULES FOR FRACTIONAL GIFTS.—

(1) DENIAL OF DEDUCTION IN CERTAIN CASES.—

(A) IN GENERAL.—No deduction shall be allowed for a contribution of an undivided portion of a taxpayer's entire interest in tangible personal property unless all interests in the property are held immediately before such contribution by—

(i) the taxpayer, or
(ii) the taxpayer and the donee.

(B) EXCEPTIONS.—The Secretary may, by regulation, provide for exceptions to subparagraph (A) in cases where all persons who hold an interest in the property make proportional contributions of an undivided portion of the entire interest held by such persons.

(2) RECAPTURE OF DEDUCTION IN CERTAIN CASES; ADDITION TO TAX.—

(A) IN GENERAL.—The Secretary shall provide for the recapture of an amount equal to any deduction allowed under this section (plus interest) with respect to any contribution of an undivided portion of a taxpayer's entire interest in tangible personal property—

(i) in any case in which the donor does not contribute all of the remaining interests in such property to the donee (or, if such donee is no longer in existence, to any person described in section 170(c)) on or before the earlier of—

(I) the date that is 10 years after the date of the initial fractional contribution, or

(II) the date of the death of the donor, and (ii) in any case in which the donee has not, during the period beginning on the date of the initial fractional contribution and ending on the date described in clause (i)—

(I) had substantial physical possession of the property, and

(II) used the property in a use which is related to a purpose or function constituting the basis for the organizations' exemption under section 501.

(B) ADDITION TO TAX.—The tax imposed under this chapter for any taxable year for which there is a recapture under subparagraph (A) shall be increased by 10 percent of the amount so recaptured.

(C) INITIAL FRACTIONAL CONTRIBUTION.—For purposes of this paragraph, the term "initial fractional contribution" means, with respect to any donor, the first gift of an undivided portion of the donor's entire interest in any tangible personal property for which a deduction is allowed under subsection (a) or (b).

(f) CROSS REFERENCES.—

(1) For treatment of certain organizations providing child care, see section 501(k).

(2) For exemption of certain gifts to or for the benefit of the United States and for rules of construction with respect to certain bequests, see section 2055(f).

(3) For treatment of gifts to or for the use of Indian tribal governments (or their subdivisions), see section 7871.

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