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107TH CONGRESS
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H. R. 8

IN THE SENATE OF THE UNITED STATES

APRIL 5, 2001

Received and read the first time

APRIL 6, 2001

Read the second time and placed on the calendar

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6 (a) IN GENERAL.—Subtitle B is hereby repealed.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

“For calendar year:	The number of percentage points is:
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:

“In the case of calendar year:	The exemption amount is:
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.

“(C) SPECIAL RULES.—

“(i) COORDINATION WITH TREATIES.—To the extent required under any treaty obligation of the United States, the exemption amount allowed under this paragraph shall be equal to the amount which bears the same ratio to the exemption amount under section 2001(b)(3) (for the calendar year in which the decedent died) as the value of the part of the decedent’s gross estate which at the time of his death is situated in the United States bears to the value of his entire gross estate wherever situated. For purposes of the preceding sentence, property shall not be treated as situated in the United States if such property is exempt from the tax imposed by this subchapter under any treaty obligation of the United States.

“(ii) COORDINATION WITH GIFT TAX EXEMPTION AND UNIFIED CREDIT.—If an exemption has been allowed under section 2501 (or a credit has been allowed under section 2505 as in effect on the day before 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-

erty acquired from the decedent by the decedent's surviving spouse.

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

“(i)(I) if an interest in such property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to any person other than such surviving spouse (or the estate of such spouse), and

“(II) if by reason of such passing such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest so passing to the surviving spouse, or

“(ii) if such interest is to be acquired for the surviving spouse, pursuant to directions of the decedent, by his executor or by 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 “(2) from the decedent’s estate by any bene-
 2 ficiary,
 3 and in determining the adjusted basis of such property,
 4 liabilities in excess of basis shall be disregarded.

5 “(h) REGULATIONS.—The Secretary shall prescribe
 6 such regulations as may be necessary to carry out the pur-
 7 poses of this section.”.

8 (b) INFORMATION RETURNS, ETC.—

9 (1) IN GENERAL.—Subpart C of part II of sub-
 10 chapter A of chapter 61 is amended to read as fol-
 11 lows:

12 **“Subpart C—Returns Relating to Transfers During**
 13 **Life or at Death**

“Sec. 6018. Returns relating to large transfers at death.

“Sec. 6019. Returns relating to large lifetime gifts.

14 **“SEC. 6018. RETURNS RELATING TO LARGE TRANSFERS AT**
 15 **DEATH.**

16 “(a) IN GENERAL.—If this section applies to prop-
 17 erty acquired from a decedent, the executor of the estate
 18 of such decedent shall make a return containing the infor-
 19 mation specified in subsection (c) with respect to such
 20 property.

21 “(b) PROPERTY TO WHICH SECTION APPLIES.—

22 “(1) LARGE TRANSFERS.—This section shall
 23 apply to all property (other than cash) acquired
 24 from a decedent if the fair market value of such

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-

erty is a capital asset shall be made without regard to the exception contained in section 1221(a)(3)(C) for basis determined under section 1022.”.

(3) DEFINITION OF EXECUTOR.—Section 7701(a) (relating to definitions) is amended by adding at the end the following:

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

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

(5) OTHER AMENDMENTS.—

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

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

(i) by striking “(e),”; and

(ii) by striking “; except that” and all 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: JEFF TRANDAHL,
Clerk.

Calendar No. 33

107TH CONGRESS
1ST SESSION

H. R. 8

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.

APRIL 6, 2001

Read the second time and placed on the calendar