

107TH CONGRESS  
2D SESSION

# S. 2769

To amend the Internal Revenue Code of 1986 to prevent the continued use of renouncing United States citizenship as a device for avoiding United States taxes.

---

## IN THE SENATE OF THE UNITED STATES

JULY 22, 2002

Mr. HARKIN (for himself and Ms. STABENOW) introduced the following bill;  
which was read twice and referred to the Committee on Finance

---

## A BILL

To amend the Internal Revenue Code of 1986 to prevent the continued use of renouncing United States citizenship as a device for avoiding United States taxes.

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

3       **SECTION 1. REVISION OF TAX RULES ON EXPATRIATION.**

4       (a) IN GENERAL.—Subpart A of part II of sub-  
5       chapter N of chapter 1 of the Internal Revenue Code of  
6       1986 is amended by inserting after section 877 the fol-  
7       lowing new section:

1 **“SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.**

2 “(a) GENERAL RULES.—For purposes of this  
3 subtitle—

4 “(1) MARK TO MARKET.—Except as provided in  
5 subsection (f), all property of a covered expatriate to  
6 whom this section applies shall be treated as sold on  
7 the day before the expatriation date for its fair mar-  
8 ket value.

9 “(2) RECOGNITION OF GAIN OR LOSS.—In the  
10 case of any sale under paragraph (1)—

11 “(A) notwithstanding any other provision  
12 of this title, any gain arising from such sale  
13 shall be taken into account for the taxable year  
14 of the sale, and

15 “(B) any loss arising from such sale shall  
16 be taken into account for the taxable year of  
17 the sale to the extent otherwise provided by this  
18 title, except that section 1091 shall not apply to  
19 any such loss.

20 Proper adjustment shall be made in the amount of  
21 any gain or loss subsequently realized for gain or  
22 loss taken into account under the preceding sen-  
23 tence.

24 “(3) EXCLUSION FOR CERTAIN GAIN.—The  
25 amount which would (but for this paragraph) be in-  
26 cludible in the gross income of any individual by rea-

son of this section shall be reduced (but not below zero) by \$600,000. For purposes of this paragraph, allocable expatriation gain taken into account under subsection (f)(2) shall be treated in the same manner as an amount required to be includible in gross income.

“(b) ELECTION TO DEFER TAX.—

“(1) IN GENERAL.—If the taxpayer elects the application of this subsection with respect to any property treated as sold by reason of subsection (a), the payment of the additional tax attributable to such property shall be postponed until the due date of the return for the taxable year in which such property is disposed of (or, in the case of property disposed of in a transaction in which gain is not recognized in whole or in part, until such other date as the Secretary may prescribe).

“(2) DETERMINATION OF TAX WITH RESPECT TO PROPERTY.—For purposes of paragraph (1), the additional tax attributable to any property is an amount which bears the same ratio to the additional tax imposed by this chapter for the taxable year solely by reason of subsection (a) as the gain taken into account under subsection (a) with respect to such property bears to the total gain taken into ac-

1 count under subsection (a) with respect to all prop-  
2 erty to which subsection (a) applies.

3 “(3) TERMINATION OF POSTPONEMENT.—No  
4 tax may be postponed under this subsection later  
5 than the due date for the return of tax imposed by  
6 this chapter for the taxable year which includes the  
7 date of death of the expatriate (or, if earlier, the  
8 time that the security provided with respect to the  
9 property fails to meet the requirements of paragraph  
10 (4), unless the taxpayer corrects such failure within  
11 the time specified by the Secretary).

12 “(4) SECURITY.—

13 “(A) IN GENERAL.—No election may be  
14 made under paragraph (1) with respect to any  
15 property unless adequate security is provided  
16 with respect to such property.

17 “(B) ADEQUATE SECURITY.—For purposes  
18 of subparagraph (A), security with respect to  
19 any property shall be treated as adequate secu-  
20 rity if—

21 “(i) it is a bond in an amount equal  
22 to the deferred tax amount under para-  
23 graph (2)(A) for the property, or

1 “(ii) the taxpayer otherwise estab-  
2 lishes to the satisfaction of the Secretary  
3 that the security is adequate.

4 “(5) WAIVER OF CERTAIN RIGHTS.—No elec-  
5 tion may be made under paragraph (1) unless the  
6 taxpayer consents to the waiver of any right under  
7 any treaty of the United States which would pre-  
8 clude assessment or collection of any tax imposed by  
9 reason of this section.

10 “(6) ELECTIONS.—An election under paragraph  
11 (1) shall only apply to property described in the elec-  
12 tion and, once made, is irrevocable. An election may  
13 be under paragraph (1) with respect to an interest  
14 in a trust with respect to which gain is required to  
15 be recognized under subsection (f)(1).

16 “(7) INTEREST.—For purposes of section 6601,  
17 the last date for the payment of tax shall be deter-  
18 mined without regard to the election under this sub-  
19 section.

20 “(c) COVERED EXPATRIATE.—For purposes of this  
21 section—

22 “(1) IN GENERAL.—The term ‘covered expa-  
23 triate’ means an expatriate who meets the require-  
24 ments of subparagraph (A) or (B) of section  
25 877(a)(2).

1           “(2) EXCEPTIONS.—An individual shall not be  
2       treated as a covered expatriate if—

3           “(A) the individual—

4               “(i) became at birth a citizen of the  
5               United States and a citizen of another  
6               country and, as of the expatriation date,  
7               continues to be a citizen of, and is taxed  
8               as a resident of, such other country, and

9               “(ii) has been a resident of the United  
10              States (as defined in section  
11              7701(b)(1)(A)(ii)) for not more than 8 tax-  
12              able years during the 15-taxable year pe-  
13              riod ending with the taxable year during  
14              which the expatriation date occurs, or

15           “(B)(i) the individual’s relinquishment of  
16           United States citizenship occurs before such in-  
17           dividual attains age 18½, and

18               “(ii) the individual has been a resident of  
19               the United States (as so defined) for not more  
20               than 5 taxable years before the date of relin-  
21               quishment.

22       “(d) SECTION NOT TO APPLY TO CERTAIN PROP-  
23   ERTY.—This section shall not apply to the following prop-  
24   erty:

1           “(1) UNITED STATES REAL PROPERTY INTER-  
 2           ESTS.—Any United States real property interest (as  
 3           defined in section 897(c)(1)), other than stock of a  
 4           United States real property holding corporation  
 5           which does not, on the day before the expatriation  
 6           date, meet the requirements of section 897(c)(2).

7           “(2) INTEREST IN CERTAIN RETIREMENT  
 8           PLANS.—

9           “(A) IN GENERAL.—Any interest in a  
 10           qualified retirement plan (as defined in section  
 11           4974(c)), other than any interest attributable to  
 12           contributions which are in excess of any limita-  
 13           tion or which violate any condition for tax-fa-  
 14           vored treatment.

15           “(B) FOREIGN PENSION PLANS.—

16           “(i) IN GENERAL.—Under regulations  
 17           prescribed by the Secretary, interests in  
 18           foreign pension plans or similar retirement  
 19           arrangements or programs.

20           “(ii) LIMITATION.—The value of prop-  
 21           erty which is treated as not sold by reason  
 22           of this subparagraph shall not exceed  
 23           \$500,000.

24           “(e) DEFINITIONS.—For purposes of this section—

1           “(1) EXPATRIATE.—The term ‘expatriate’  
2 means—

3           “(A) any United States citizen who relin-  
4 quishes his citizenship, and

5           “(B) any long-term resident of the United  
6 States who—

7           “(i) ceases to be a lawful permanent  
8 resident of the United States (within the  
9 meaning of section 7701(b)(6)), or

10           “(ii) commences to be treated as a  
11 resident of a foreign country under the  
12 provisions of a tax treaty between the  
13 United States and the foreign country and  
14 who does not waive the benefits of such  
15 treaty applicable to residents of the foreign  
16 country.

17           “(2) EXPATRIATION DATE.—The term ‘expa-  
18 triation date’ means—

19           “(A) the date an individual relinquishes  
20 United States citizenship, or

21           “(B) in the case of a long-term resident of  
22 the United States, the date of the event de-  
23 scribed in clause (i) or (ii) of paragraph (1)(B).



1           “(3) RELINQUISHMENT OF CITIZENSHIP.—A  
2       citizen shall be treated as relinquishing his United  
3       States citizenship on the earliest of—

4           “(A) the date the individual renounces his  
5       United States nationality before a diplomatic or  
6       consular officer of the United States pursuant  
7       to paragraph (5) of section 349(a) of the Immi-  
8       gration and Nationality Act (8 U.S.C.  
9       1481(a)(5)),

10          “(B) the date the individual furnishes to  
11       the United States Department of State a signed  
12       statement of voluntary relinquishment of  
13       United States nationality confirming the per-  
14       formance of an act of expatriation specified in  
15       paragraph (1), (2), (3), or (4) of section 349(a)  
16       of the Immigration and Nationality Act (8  
17       U.S.C. 1481(a)(1)–(4)),

18          “(C) the date the United States Depart-  
19       ment of State issues to the individual a certifi-  
20       cate of loss of nationality, or

21          “(D) the date a court of the United States  
22       cancels a naturalized citizen’s certificate of nat-  
23       uralization.

24       Subparagraph (A) or (B) shall not apply to any indi-  
25       vidual unless the renunciation or voluntary relin-

1       quishment is subsequently approved by the issuance  
2       to the individual of a certificate of loss of nationality  
3       by the United States Department of State.

4               “(4) LONG-TERM RESIDENT.—The term ‘long-  
5       term resident’ has the meaning given to such term  
6       by section 877(e)(2).

7       “(f) SPECIAL RULES APPLICABLE TO BENE-  
8       FICIARIES’ INTERESTS IN TRUST.—

9               “(1) IN GENERAL.—Except as provided in para-  
10       graph (2), if an individual is determined under para-  
11       graph (3) to hold an interest in a trust on the day  
12       before the expatriation date—

13               “(A) the individual shall not be treated as  
14       having sold such interest,

15               “(B) such interest shall be treated as a  
16       separate share in the trust, and

17               “(C)(i) such separate share shall be treat-  
18       ed as a separate trust consisting of the assets  
19       allocable to such share,

20               “(ii) the separate trust shall be treated as  
21       having sold its assets on the day before the ex-  
22       patriation date for their fair market value and  
23       as having distributed all of its assets to the in-  
24       dividual as of such time, and

1           “(iii) the individual shall be treated as hav-  
 2           ing recontributed the assets to the separate  
 3           trust.

4           Subsection (a)(2) shall apply to any income, gain, or  
 5           loss of the individual arising from a distribution de-  
 6           scribed in subparagraph (C)(ii).

7           “(2) SPECIAL RULES FOR INTERESTS IN QUALI-  
 8           FIED TRUSTS.—

9           “(A) IN GENERAL.—If the trust interest  
 10          described in paragraph (1) is an interest in a  
 11          qualified trust—

12               “(i) paragraph (1) and subsection (a)  
 13               shall not apply, and

14               “(ii) in addition to any other tax im-  
 15               posed by this title, there is hereby imposed  
 16               on each distribution with respect to such  
 17               interest a tax in the amount determined  
 18               under subparagraph (B).

19           “(B) AMOUNT OF TAX.—The amount of  
 20          tax under subparagraph (A)(ii) shall be equal to  
 21          the lesser of—

22               “(i) the highest rate of tax imposed by  
 23               section 1(e) for the taxable year which in-  
 24               cludes the day before the expatriation date,

1 multiplied by the amount of the distribu-  
2 tion, or

3 “(ii) the balance in the deferred tax  
4 account immediately before the distribution  
5 determined without regard to any increases  
6 under subparagraph (C)(ii) after the 30th  
7 day preceding the distribution.

8 “(C) DEFERRED TAX ACCOUNT.—For pur-  
9 poses of subparagraph (B)(ii)—

10 “(i) OPENING BALANCE.—The open-  
11 ing balance in a deferred tax account with  
12 respect to any trust interest is an amount  
13 equal to the tax which would have been im-  
14 posed on the allocable expatriation gain  
15 with respect to the trust interest if such  
16 gain had been included in gross income  
17 under subsection (a).

18 “(ii) INCREASE FOR INTEREST.—The  
19 balance in the deferred tax account shall  
20 be increased by the amount of interest de-  
21 termined (on the balance in the account at  
22 the time the interest accrues), for periods  
23 after the 90th day after the expatriation  
24 date, by using the rates and method appli-

1 cable under section 6621 for underpay-  
 2 ments of tax for such periods.

3 “(iii) DECREASE FOR TAXES PRE-  
 4 VIOUSLY PAID.—The balance in the tax de-  
 5 ferred account shall be reduced—

6 “(I) by the amount of taxes im-  
 7 posed by subparagraph (A) on any  
 8 distribution to the person holding the  
 9 trust interest, and

10 “(II) in the case of a person  
 11 holding a nonvested interest, to the  
 12 extent provided in regulations, by the  
 13 amount of taxes imposed by subpara-  
 14 graph (A) on distributions from the  
 15 trust with respect to nonvested inter-  
 16 ests not held by such person.

17 “(D) ALLOCABLE EXPATRIATION GAIN.—  
 18 For purposes of this paragraph, the allocable  
 19 expatriation gain with respect to any bene-  
 20 ficiary’s interest in a trust is the amount of  
 21 gain which would be allocable to such bene-  
 22 ficiary’s vested and nonvested interests in the  
 23 trust if the beneficiary held directly all assets  
 24 allocable to such interests.

25 “(E) TAX DEDUCTED AND WITHHELD.—

1 “(i) IN GENERAL.—The tax imposed  
 2 by subparagraph (A)(ii) shall be deducted  
 3 and withheld by the trustees from the dis-  
 4 tribution to which it relates.

5 “(ii) EXCEPTION WHERE FAILURE TO  
 6 WAIVE TREATY RIGHTS.—If an amount  
 7 may not be deducted and withheld under  
 8 clause (i) by reason of the distributee fail-  
 9 ing to waive any treaty right with respect  
 10 to such distribution—

11 “(I) the tax imposed by subpara-  
 12 graph (A)(ii) shall be imposed on the  
 13 trust and each trustee shall be person-  
 14 ally liable for the amount of such tax,  
 15 and

16 “(II) any other beneficiary of the  
 17 trust shall be entitled to recover from  
 18 the distributee the amount of such tax  
 19 imposed on the other beneficiary.

20 “(F) DISPOSITION.—If a trust ceases to be  
 21 a qualified trust at any time, a covered expa-  
 22 triate disposes of an interest in a qualified  
 23 trust, or a covered expatriate holding an inter-  
 24 est in a qualified trust dies, then, in lieu of the

1 tax imposed by subparagraph (A)(ii), there is  
 2 hereby imposed a tax equal to the lesser of—

3 “(i) the tax determined under para-  
 4 graph (1) as if the day before the expatria-  
 5 tion date were the date of such cessation,  
 6 disposition, or death, whichever is applica-  
 7 ble, or

8 “(ii) the balance in the tax deferred  
 9 account immediately before such date.

10 Such tax shall be imposed on the trust and  
 11 each trustee shall be personally liable for the  
 12 amount of such tax and any other beneficiary  
 13 of the trust shall be entitled to recover from the  
 14 covered expatriate or the estate the amount of  
 15 such tax imposed on the other beneficiary.

16 “(G) DEFINITIONS AND SPECIAL RULE.—

17 For purposes of this paragraph—

18 “(i) QUALIFIED TRUST.—The term  
 19 ‘qualified trust’ means a trust—

20 “(I) which is organized under,  
 21 and governed by, the laws of the  
 22 United States or a State, and

23 “(II) with respect to which the  
 24 trust instrument requires that at least  
 25 1 trustee of the trust be an individual

1 citizen of the United States or a do-  
 2 mestic corporation.

3 “(ii) VESTED INTEREST.—The term  
 4 ‘vested interest’ means any interest which,  
 5 as of the day before the expatriation date,  
 6 is vested in the beneficiary.

7 “(iii) NONVESTED INTEREST.—The  
 8 term ‘nonvested interest’ means, with re-  
 9 spect to any beneficiary, any interest in a  
 10 trust which is not a vested interest. Such  
 11 interest shall be determined by assuming  
 12 the maximum exercise of discretion in  
 13 favor of the beneficiary and the occurrence  
 14 of all contingencies in favor of the bene-  
 15 ficiary.

16 “(iv) ADJUSTMENTS.—The Secretary  
 17 may provide for such adjustments to the  
 18 bases of assets in a trust or a deferred tax  
 19 account, and the timing of such adjust-  
 20 ments, in order to ensure that gain is  
 21 taxed only once.

22 “(3) DETERMINATION OF BENEFICIARIES’ IN-  
 23 TEREST IN TRUST.—

24 “(A) DETERMINATIONS UNDER PARA-  
 25 GRAPH (1).—For purposes of paragraph (1), a



1 beneficiary's interest in a trust shall be based  
2 upon all relevant facts and circumstances, in-  
3 cluding the terms of the trust instrument and  
4 any letter of wishes or similar document, histor-  
5 ical patterns of trust distributions, and the ex-  
6 istence of and functions performed by a trust  
7 protector or any similar advisor.

8 “(B) OTHER DETERMINATIONS.—For pur-  
9 poses of this section—

10 “(i) CONSTRUCTIVE OWNERSHIP.—If  
11 a beneficiary of a trust is a corporation,  
12 partnership, trust, or estate, the share-  
13 holders, partners, or beneficiaries shall be  
14 deemed to be the trust beneficiaries for  
15 purposes of this section.

16 “(ii) TAXPAYER RETURN POSITION.—  
17 A taxpayer shall clearly indicate on its in-  
18 come tax return—

19 “(I) the methodology used to de-  
20 termine that taxpayer's trust interest  
21 under this section, and

22 “(II) if the taxpayer knows (or  
23 has reason to know) that any other  
24 beneficiary of such trust is using a  
25 different methodology to determine

1                   such beneficiary's trust interest under  
2                   this section.

3           “(g) TERMINATION OF DEFERRALS, ETC.—In the  
4 case of any covered expatriate, notwithstanding any other  
5 provision of this title—

6                   “(1) any period during which recognition of in-  
7 come or gain is deferred shall terminate on the day  
8 before the expatriation date, and

9                   “(2) any extension of time for payment of tax  
10 shall cease to apply on the day before the expatria-  
11 tion date and the unpaid portion of such tax shall  
12 be due and payable at the time and in the manner  
13 prescribed by the Secretary.

14           “(h) REGULATIONS.—The Secretary shall prescribe  
15 such regulations as may be necessary or appropriate to  
16 carry out the purposes of this section.”.

17           (b) TAX ON GIFTS AND BEQUESTS RECEIVED BY  
18 UNITED STATES CITIZENS AND RESIDENTS FROM EXPA-  
19 TRIATES.—

20                   (1) IN GENERAL.—Subtitle B of the Internal  
21 Revenue Code of 1986 (relating to estate and gift  
22 taxes) is amended by inserting after chapter 13 the  
23 following new chapter:

1     **“CHAPTER 13A—GIFTS AND BEQUESTS**  
 2                     **FROM EXPATRIATES**

“Sec. 2681. Imposition of tax.

3     **“SEC. 2681. IMPOSITION OF TAX.**

4             “(a) IN GENERAL.—If, during any calendar year, any  
 5 United States citizen or resident receives any covered gift  
 6 or bequest, there is hereby imposed a tax equal to the  
 7 product of—

8             “(1) the highest rate of tax specified in the  
 9 table contained in section 2001(c) as in effect on the  
 10 date of such receipt (or, if greater, the highest rate  
 11 of tax specified in the table applicable under section  
 12 2502(a) as in effect on the date), and

13             “(2) the value of such covered gift or bequest.

14             “(b) TAX TO BE PAID BY RECIPIENT.—The tax im-  
 15 posed by subsection (a) on any covered gift or bequest  
 16 shall be paid by the person receiving such gift or bequest.

17             “(c) EXCEPTION FOR CERTAIN GIFTS.—Subsection  
 18 (a) shall apply only to the extent that the covered gifts  
 19 and bequests received during the calendar year exceed  
 20 \$10,000.

21             “(d) TAX REDUCED BY FOREIGN GIFT OR ESTATE  
 22 TAX.—The tax imposed by subsection (a) on any covered  
 23 gift or bequest shall be reduced by the amount of any gift

1 or estate tax paid to a foreign country with respect to such  
 2 covered gift or bequest.

3 “(e) COVERED GIFT OR BEQUEST.—

4 “(1) IN GENERAL.—For purposes of this chap-  
 5 ter, the term ‘covered gift or bequest’ means—

6 “(A) any property acquired by gift directly  
 7 or indirectly from an individual who, at the  
 8 time of such acquisition, was an expatriate, and

9 “(B) any property acquired by bequest, de-  
 10 vise, or inheritance directly or indirectly from  
 11 an individual who, at the time of death, was an  
 12 expatriate.

13 “(2) EXCEPTIONS FOR TRANSFERS OTHERWISE  
 14 SUBJECT TO ESTATE OR GIFT TAX.—Such term shall  
 15 not include—

16 “(A) any property shown on a timely filed  
 17 return of tax imposed by chapter 12 which is a  
 18 taxable gift by the expatriate, and

19 “(B) any property shown on a timely filed  
 20 return of tax imposed by chapter 11 of the es-  
 21 tate of the expatriate.

22 “(3) TRANSFERS IN TRUST.—Any covered gift  
 23 or bequest which is made in trust shall be treated  
 24 as made to the beneficiaries of such trust in propor-

1       tion to their respective interests in such trust (as de-  
 2       termined under section 877A(f)(3)).

3       “(f) EXPATRIATE.—For purposes of this section, the  
 4       term ‘expatriate’ has the meaning given to such term by  
 5       section 877A(e)(1).”.

6               (2) CLERICAL AMENDMENT.—The table of  
 7       chapters for subtitle B of such Code is amended by  
 8       inserting after the item relating to chapter 13 the  
 9       following new item:

                  “Chapter 13A. Gifts and bequests from expatriates.”.

10       (c) DEFINITION OF TERMINATION OF UNITED  
 11       STATES CITIZENSHIP.—Section 7701(a) of such Code is  
 12       amended by adding at the end the following new para-  
 13       graph:

14               “(48) TERMINATION OF UNITED STATES CITI-  
 15       ZENSHIP.—

16               “(A) IN GENERAL.—An individual shall  
 17       not cease to be treated as a United States citi-  
 18       zen before the date on which the individual’s  
 19       citizenship is treated as relinquished under sec-  
 20       tion 877A(e)(3).

21               “(B) DUAL CITIZENS.—Under regulations  
 22       prescribed by the Secretary, subparagraph (A)  
 23       shall not apply to an individual who became at  
 24       birth a citizen of the United States and a citi-  
 25       zen of another country.”.

1 (d) CONFORMING AMENDMENT.—Paragraph (1) of  
 2 section 6039G(d) of such Code is amended by inserting  
 3 “or 877A” after “section 877”.

4 (e) CLERICAL AMENDMENT.—The table of sections  
 5 for subpart A of part II of subchapter N of chapter 1  
 6 of such Code is amended by inserting after the item relat-  
 7 ing to section 877 the following new item:

“Sec. 877A. Tax responsibilities of expatriation.”.

8 (f) EFFECTIVE DATE.—

9 (1) IN GENERAL.—Except as provided in this  
 10 subsection, the amendments made by this section  
 11 shall apply to expatriates (within the meaning of  
 12 section 877A(e) of the Internal Revenue Code of  
 13 1986, as added by this section) whose expatriation  
 14 date (as so defined) occurs on or after the date of  
 15 action on this Act by the Committee on Finance of  
 16 the Senate.

17 (2) GIFTS AND BEQUESTS.—Chapter 13A of  
 18 the Internal Revenue Code of 1986 (as added by  
 19 subsection (b)) shall apply to covered gifts and be-  
 20 quests (as defined in section 2681 of such Code, as  
 21 so added) received on or after the date of action on  
 22 this Act by the Committee on Finance of the Senate,  
 23 regardless of when the transferor expatriated.

○