To amend the Internal Revenue Code of 1986 to reinstate estate and generation-skipping taxes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 25, 2021

Mr. Sanders (for himself, Mrs. Gillibrand, Mr. Whitehouse, Mr. Van Hollen, and Mr. Reed) 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 reinstate estate and generation-skipping taxes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “For the 99.5 Percent Act”.

SEC. 2. MODIFICATIONS TO ESTATE, GIFT, AND GENERATION-SKIPPING TRANSFER TAXES.

(a) Modification of Rates.—Section 2001(c) of the Internal Revenue Code of 1986 is amended by striking the last 2 rows and inserting the following:


“Over $750,000 but not over $3,500,000 ............... $248,300 plus 39 percent of the excess of such amount over $750,000.

Over $3,500,000 but not over $10,000,000 ......... $1,320,800 plus 45 percent of the excess of such amount over $3,500,000.

Over $10,000,000 but not over $50,000,000 ...... $4,245,800 plus 50 percent of the excess of such amount over $10,000,000.

Over $50,000,000 but not over $1,000,000,000 $24,245,800 plus 55 percent of the excess of such amount over $50,000,000.

Over $1,000,000,000 ............................................. $546,745,800 plus 65 percent of the excess of such amount over $1,000,000,000.”.

(b) Exclusion Amount.—

(1) Estate Tax.—Paragraph (3) of section 2010(c) of the Internal Revenue Code of 1986 is amended to read as follows:

“(3) Basic exclusion amount.—For purposes of this section, the basic exclusion amount is $3,500,000.”.

(2) Modification to Gift Tax Exclusion Amount.—Paragraph (1) of section 2505(a) of the Internal Revenue Code of 1986 is amended to read as follows:

“(1) the applicable credit amount in effect under section 2010(c) for such calendar year (determined as if the basic exclusion amount in section 2010(c)(2)(A) were $1,000,000), reduced by”.

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(c) Effective Date.—The amendments made by this section shall apply to estates of decedents dying, and generation-skipping transfers and gifts made, after December 31, 2021.

SEC. 3. MODIFICATION OF RULES FOR VALUE OF CERTAIN FARM, ETC., REAL PROPERTY.

(a) In General.—Paragraph (2) of section 2032A(a) of the Internal Revenue Code of 1986 is amended by striking “$750,000” and inserting “$3,000,000”.

(b) Inflation Adjustment.—Paragraph (3) of section 2032A(a) of such Code is amended—

(1) by striking “1998” and inserting “2022”,

(2) by striking “$750,000” each place it appears and inserting “$3,000,000”, and

(3) by striking “calendar year 1997” and inserting “calendar year 2021” in subparagraph (B).

(c) Effective Date.—The amendments made by this section shall apply to estates of decedents dying, and gifts made, after December 31, 2021.

SEC. 4. MODIFICATION OF ESTATE TAX RULES WITH RESPECT TO LAND SUBJECT TO CONSERVATION EASEMENTS.

(a) Modification of Exclusion Limitation.—Subparagraph (B) of section 2031(c)(1) of the Internal
Revenue Code of 1986 is amended by striking “$500,000” and inserting “$2,000,000”.

(b) MODIFICATION OF APPLICABLE PERCENTAGE.—Paragraph (2) of section 2031(c) of the Internal Revenue Code of 1986 is amended by striking “40 percent” and inserting “60 percent”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying, and gifts made, after December 31, 2021.

SEC. 5. DISALLOWANCE OF STEP-UP IN BASIS FOR PROPERTY HELD IN CERTAIN GRANTOR TRUSTS.

(a) IN GENERAL.—Section 1014 of the Internal Revenue Code of 1986 is amended—

(1) by redesignating subsection (f) as subsection (g), and

(2) by inserting after subsection (e) the following:

“(f) PROPERTY HELD IN CERTAIN GRANTOR TRUSTS.—This section shall not apply to property—

“(1) held in a trust of which the transferor is considered the owner under subpart E of part I of subchapter J, and

“(2) if, after the transfer of such property to the trust, such property is not includible in the gross estate of the transferor for purposes of chapter 11.”
(b) CONFORMING AMENDMENT.—Section 6662(k) of the Internal Revenue Code of 1986 is amended by striking “1014(f)” and inserting “1014(g)”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers after the date of the enactment of this Act.

SEC. 6. VALUATION RULES FOR CERTAIN TRANSFERS OF NONBUSINESS ASSETS; LIMITATION ON MINORITY DISCOUNTS.

(a) IN GENERAL.—Section 2031 of the Internal Revenue Code of 1986 is amended by redesignating subsection (d) as subsection (f) and by inserting after subsection (c) the following new subsections:

“(d) VALUATION RULES FOR CERTAIN TRANSFERS OF NONBUSINESS ASSETS.—For purposes of this chapter and chapter 12—

“(1) IN GENERAL.—In the case of the transfer of any interest in an entity other than an interest which is actively traded (within the meaning of section 1092)—

“(A) the value of any nonbusiness assets held by the entity with respect to such interest shall be determined as if the transferor had transferred such assets directly to the transferee (and no valuation discount shall be al-
lowed with respect to such nonbusiness assets),
and

“(B) such nonbusiness assets shall not be
taken into account in determining the value of
the interest in the entity.

“(2) NONBUSINESS ASSETS.—For purposes of
this subsection—

“(A) IN GENERAL.—The term ‘nonbusi-
ness asset’ means any asset which is not used
in the active conduct of 1 or more trades or
businesses.

“(B) EXCEPTION FOR CERTAIN PASSIVE
ASSETS.—Except as provided in subparagraph
(C), a passive asset shall not be treated for pur-
poses of subparagraph (A) as used in the active
conduct of a trade or business unless—

“(i) the asset is property described in
paragraph (1) or (4) of section 1221(a) or
is a hedge with respect to such property,
or

“(ii) the asset is real property used in
the active conduct of 1 or more real prop-
erty trades or businesses (within the mean-
ing of section 469(c)(7)(C)) in which the
transferor materially participates and with
respect to which the transferor meets the requirements of section 469(e)(7)(B)(ii).

For purposes of clause (ii), material participation shall be determined under the rules of section 469(h), except that section 469(h)(3) shall be applied without regard to the limitation to farming activity.

“(C) Exception for working capital.—Any asset (including a passive asset) which is held as a part of the reasonably required working capital needs of a trade or business shall be treated as used in the active conduct of a trade or business.

“(3) Passive asset.—For purposes of this subsection, the term ‘passive asset’ means any—

“(A) cash or cash equivalents,

“(B) except to the extent provided by the Secretary, stock in a corporation or any other equity, profits, or capital interest in any entity,

“(C) evidence of indebtedness, option, forward or futures contract, notional principal contract, or derivative,

“(D) asset described in clause (iii), (iv), or (v) of section 351(e)(1)(B),

“(E) annuity,
“(F) real property used in 1 or more real property trades or businesses (as defined in section 469(c)(7)(C)),

“(G) asset (other than a patent, trademark, or copyright) which produces royalty income,

“(H) commodity,

“(I) collectible (within the meaning of section 408(m)), or

“(J) any other asset specified in regulations prescribed by the Secretary.

“(4) LOOK-THRU RULES.—

“(A) IN GENERAL.—If a nonbusiness asset of an entity consists of a 10-percent interest in any other entity, this subsection shall be applied by disregarding the 10-percent interest and by treating the entity as holding directly its ratable share of the assets of the other entity. This subparagraph shall be applied successively to any 10-percent interest of such other entity in any other entity.

“(B) 10-PERCENT INTEREST.—The term ‘10-percent interest’ means—

“(i) in the case of an interest in a corporation, ownership of at least 10 percent
(by vote or value) of the stock in such corporation,

“(ii) in the case of an interest in a partnership, ownership of at least 10 percent of the capital or profits interest in the partnership, and

“(iii) in any other case, ownership of at least 10 percent of the beneficial interests in the entity.

“(5) COORDINATION WITH SUBSECTION (b).—Subsection (b) shall apply after the application of this subsection.

“(e) LIMITATION ON MINORITY DISCOUNTS.—For purposes of this chapter and chapter 12, in the case of the transfer of any interest in an entity other than an interest which is actively traded (within the meaning of section 1092), no discount shall be allowed by reason of the fact that the transferee does not have control of such entity, or by reason of the lack of marketability of the interest, if the transferor, the transferee, and members of the family (as defined in section 2032A(e)(2)) of the transferor and transferee—

“(1) have control of such entity, or

“(2) own the majority of the ownership interests (by value) in such entity.”.
(b) Effective Date.—The amendments made by this section shall apply to transfers after the date of the enactment of this Act.

SEC. 7. REQUIRED MINIMUM 10-YEAR TERM, ETC., FOR GRANTOR RETAINED ANNUITY TRUSTS.

(a) In General.—Subsection (b) of section 2702 of the Internal Revenue Code of 1986 is amended—

(1) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively, and by moving such subparagraphs (as so redesignated) 2 ems to the right;

(2) by striking “For purposes of” and inserting the following:

“(1) In general.—For purposes of”;

(3) by striking “paragraph (1) or (2)” in paragraph (1)(C) (as so redesignated) and inserting “subparagraph (A) or (B)”;

(4) by adding at the end the following new paragraph:

“(2) Additional requirements with respect to grantor retained annuities.—For purposes of subsection (a), in the case of an interest described in paragraph (1)(A) (determined without regard to this paragraph) which is retained by the
transferor, such interest shall be treated as described in such paragraph only if—

“(A) the right to receive the fixed amounts referred to in such paragraph is for a term of not less than 10 years and not more than the life expectancy of the annuitant plus 10 years,

“(B) such fixed amounts, when determined on an annual basis, do not decrease during the term described in subparagraph (A), and

“(C) the remainder interest has a value, as determined as of the time of the transfer, which is—

“(i) not less than an amount equal to the greater of—

“(I) 25 percent of the fair market value of the property in the trust, or

“(II) $500,000, and

“(ii) not greater than the fair market value of the property in the trust.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers made after the date of the enactment of this Act.
SEC. 8. CERTAIN TRANSFER TAX RULES APPLICABLE TO

GRANTOR TRUSTS.

(a) In General.—Subtitle B of the Internal Revenue Code of 1986 is amended by adding at the end the following new chapter:

“CHAPTER 16—SPECIAL RULES FOR

GRANTOR TRUSTS

Sec. 2901. Application of transfer taxes.

“SEC. 2901. APPLICATION OF TRANSFER TAXES.

“(a) In General.—In the case of any portion of a trust to which this section applies—

“(1) the value of the gross estate of the deceased deemed owner of such portion shall include all assets attributable to that portion at the time of the death of such owner,

“(2) any distribution from such portion to one or more beneficiaries during the life of the deemed owner of such portion shall be treated as a transfer by gift for purposes of chapter 12, and

“(3) if at any time during the life of the deemed owner of such portion, such owner ceases to be treated as the owner of such portion under subpart E of part 1 of subchapter J of chapter 1, all assets attributable to such portion at such time shall be treated for purposes of chapter 12 as a transfer by gift made by the deemed owner.
“(b) Portion of Trust to Which Section Applies.—This section shall apply to—

“(1) the portion of a trust with respect to which the grantor is the deemed owner, and

“(2) the portion of the trust to which a person who is not the grantor is a deemed owner by reason of the rules of subpart E of part 1 of subchapter J of chapter 1, and such deemed owner engages in a sale, exchange, or comparable transaction with the trust that is disregarded for purposes of subtitle A.

For purposes of paragraph (2), the portion of the trust described with respect to a transaction is the portion of the trust attributable to the property received by the trust in such transaction, including all retained income therefrom, appreciation thereon, and reinvestments thereof, net of the amount of consideration received by the deemed owner in such transaction.

“(c) Exceptions.—This section shall not apply to any trust that is includible in the gross estate of the deemed owner (without regard to subsection (a)(1)).

“(d) Deemed Owner Defined.—For purposes of this section, the term ‘deemed owner’ means any person who is treated as the owner of a portion of a trust under subpart E of part 1 of subchapter J of chapter 1.
“(e) Reduction for Taxable Gifts to Trust Made by Owner.—The amount to which subsection (a) applies shall be reduced by the value of any transfer by gift by the deemed owner to the trust previously taken into account by the deemed owner under chapter 12.

“(f) Liability for Payment of Tax.—Any tax imposed pursuant to subsection (a) shall be a liability of the trust.”.

(b) Clerical Amendment.—The table of chapters for subtitle B of such Code is amended by adding at the end the following new item:

“Chapter 16. Special Rules for Grantor Trusts”.

(c) Effective Date.—The amendments made by this section shall apply—

(1) to trusts created on or after the date of the enactment of this Act,

(2) to any portion of a trust established before the date of the enactment of this Act which is attributable to a contribution made on or after such date, and

(3) to any portion of a trust established before the date of the enactment of this Act to which section 2901(a) of the Internal Revenue Code of 1986 (as added by subsection (a)) applies by reason of a transaction described in section 2901(b)(2) of such Code on or after such date.
SEC. 9. ELIMINATION OF GENERATION-SKIPPING TRANSFER TAX EXEMPTION FOR CERTAIN TRUSTS.

(a) IN GENERAL.—Section 2642 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(h) Elimination of GST Exemption for Certain Trusts.—

“(1) In general.—

“(A) Transfers from non-qualifying trusts.—In the case of any generation-skipping transfer made from a trust that is not a qualifying trust, the inclusion ratio with respect to any property transferred in such transfer shall be 1.

“(B) Qualifying trust.—For purposes of this subsection, the term ‘qualifying trust’ means a trust for which the date of termination of such trust is not greater than 50 years after the date on which such trust is created.

“(2) Trusts created before date of enactment.—In the case of any trust created before the date of the enactment of this subsection, such trust shall be deemed to be a qualifying trust for a period of 50 years after the date of the enactment of this subsection.
“(3) **DATE OF CREATION OF CERTAIN DEEMED SEPARATE TRUSTS.**—In the case of any portion of a trust which is treated as a separate trust under section 2654(b)(1), such separate trust shall be treated as created on the date of the first transfer described in such section with respect to such separate trust.

“(4) **DATE OF CREATION OF POUR-OVER TRUSTS.**—In the case of any generation-skipping transfer of property which involves the transfer of property from 1 trust to another trust, the date of the creation of the transferee trust shall be treated as being the earlier of—

“(A) the date of the creation of such transferee trust, or

“(B) the date of the creation of the transferor trust.

In the case of multiple transfers to which the preceding sentence applies, the date of the creation of the transferor trust shall be determined under the preceding sentence before the application of the preceding sentence to determine the date of the creation of the transferee trust.

“(5) **REGULATIONS.**—The Secretary may prescribe such regulations or other guidance as may be
necessary or appropriate to carry out this sub-
section.”.

(b) EFFECTIVE DATE.—The amendments made by
this section shall take effect on the date of the enactment
of this Act.

SEC. 10. SIMPLIFYING GIFT TAX EXCLUSION FOR ANNUAL
GIFTS.

(a) IN GENERAL.—Paragraph (1) of section 2503(b)
of the Internal Revenue Code of 1986 is amended to read
as follows:

“(1) IN GENERAL.—

“(A) LIMIT PER DONEE.—In the case of
gifts made to any person by the donor during
the calendar year, the first $10,000 of such
gifts to such person shall not, for purposes of
subsection (a), be included in the total amount
of gifts made during such year.

“(B) CUMULATIVE LIMIT PER DONOR.—

“(i) IN GENERAL.—The aggregate
amount excluded under subparagraph (A)
with respect to all transfers described in
clause (ii) made by the donor during the
calendar year shall not exceed twice the
dollar amount in effect under such sub-
paragraph for such calendar year.
“(ii) Transfers subject to limitation.—The transfers described in this clause are—

“(I) a transfer in trust,

“(II) a transfer of an interest in a passthrough entity,

“(III) a transfer of an interest subject to a prohibition on sale, and

“(IV) any other transfer of property that, without regard to withdrawal, put, or other such rights in the donee, cannot immediately be liquidated by the donee.”.

(b) Conforming Amendment.—Section 2503 of the Internal Revenue Code of 1986 is amended by striking subsection (c).

(c) Regulations.—The Secretary of the Treasury, or the Secretary of the Treasury’s delegate, may prescribe such regulations or other guidance as may be necessary or appropriate to carry out the amendments made by this section.

(d) Effective Date.—The amendments made by this section shall apply to any calendar year beginning after the date of the enactment of this Act.