

117TH CONGRESS
1ST SESSION

S. 994

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.

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. SHORT TITLE.**

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

6 **SEC. 2. MODIFICATIONS TO ESTATE, GIFT, AND GENERA-**
7 **TION-SKIPPING TRANSFER TAXES.**

8 (a) **MODIFICATION OF RATES.**—Section 2001(c) of
9 the Internal Revenue Code of 1986 is amended by striking
10 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.”. |

1 (b) EXCLUSION AMOUNT.—

2 (1) ESTATE TAX.—Paragraph (3) of section
3 2010(c) of the Internal Revenue Code of 1986 is
4 amended to read as follows:

5 “(3) BASIC EXCLUSION AMOUNT.—For pur-
6 poses of this section, the basic exclusion amount is
7 \$3,500,000.”.

8 (2) MODIFICATION TO GIFT TAX EXCLUSION
9 AMOUNT.—Paragraph (1) of section 2505(a) of the
10 Internal Revenue Code of 1986 is amended to read
11 as follows:

12 “(1) the applicable credit amount in effect
13 under section 2010(c) for such calendar year (deter-
14 mined as if the basic exclusion amount in section
15 2010(c)(2)(A) were \$1,000,000), reduced by”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to estates of decedents dying, and
3 generation-skipping transfers and gifts made, after De-
4 cember 31, 2021.

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

7 (a) IN GENERAL.—Paragraph (2) of section
8 2032A(a) of the Internal Revenue Code of 1986 is amend-
9 ed by striking “\$750,000” and inserting “\$3,000,000”.

10 (b) INFLATION ADJUSTMENT.—Paragraph (3) of sec-
11 tion 2032A(a) of such Code is amended—

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

13 (2) by striking “\$750,000” each place it ap-
14 pears and inserting “\$3,000,000”, and

15 (3) by striking “calendar year 1997” and in-
16 serting “calendar year 2021” in subparagraph (B).

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

20 **SEC. 4. MODIFICATION OF ESTATE TAX RULES WITH RE-**
21 **SPECT TO LAND SUBJECT TO CONSERVATION**
22 **EASEMENTS.**

23 (a) MODIFICATION OF EXCLUSION LIMITATION.—
24 Subparagraph (B) of section 2031(c)(1) of the Internal

1 Revenue Code of 1986 is amended by striking “\$500,000”
2 and inserting “\$2,000,000”.

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

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

10 **SEC. 5. DISALLOWANCE OF STEP-UP IN BASIS FOR PROP-**
11 **ERTY HELD IN CERTAIN GRANTOR TRUSTS.**

12 (a) IN GENERAL.—Section 1014 of the Internal Rev-
13 enue Code of 1986 is amended—

14 (1) by redesignating subsection (f) as sub-
15 section (g), and

16 (2) by inserting after subsection (e) the fol-
17 lowing:

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

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

23 “(2) if, after the transfer of such property to
24 the trust, such property is not includible in the gross
25 estate of the transferor for purposes of chapter 11.”.

1 (b) CONFORMING AMENDMENT.—Section 6662(k) of
2 the Internal Revenue Code of 1986 is amended by striking
3 “1014(f)” and inserting “1014(g)”.

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

7 **SEC. 6. VALUATION RULES FOR CERTAIN TRANSFERS OF**
8 **NONBUSINESS ASSETS; LIMITATION ON MI-**
9 **NORITY DISCOUNTS.**

10 (a) IN GENERAL.—Section 2031 of the Internal Rev-
11 enue Code of 1986 is amended by redesignating subsection
12 (d) as subsection (f) and by inserting after subsection (c)
13 the following new subsections:

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

17 “(1) IN GENERAL.—In the case of the transfer
18 of any interest in an entity other than an interest
19 which is actively traded (within the meaning of sec-
20 tion 1092)—

21 “(A) the value of any nonbusiness assets
22 held by the entity with respect to such interest
23 shall be determined as if the transferor had
24 transferred such assets directly to the trans-
25 feree (and no valuation discount shall be al-

1 lowed with respect to such nonbusiness assets),
2 and

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

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

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

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

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

21 “(ii) the asset is real property used in
22 the active conduct of 1 or more real prop-
23 erty trades or businesses (within the mean-
24 ing of section 469(c)(7)(C)) in which the
25 transferor materially participates and with

1 respect to which the transferor meets the
2 requirements of section 469(c)(7)(B)(ii).

3 For purposes of clause (ii), material participa-
4 tion shall be determined under the rules of sec-
5 tion 469(h), except that section 469(h)(3) shall
6 be applied without regard to the limitation to
7 farming activity.

8 “(C) EXCEPTION FOR WORKING CAP-
9 ITAL.—Any asset (including a passive asset)
10 which is held as a part of the reasonably re-
11 quired working capital needs of a trade or busi-
12 ness shall be treated as used in the active con-
13 duct of a trade or business.

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

16 “(A) cash or cash equivalents,

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

20 “(C) evidence of indebtedness, option, for-
21 ward or futures contract, notional principal con-
22 tract, or derivative,

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

25 “(E) annuity,

1 “(F) real property used in 1 or more real
2 property trades or businesses (as defined in sec-
3 tion 469(e)(7)(C)),

4 “(G) asset (other than a patent, trade-
5 mark, or copyright) which produces royalty in-
6 come,

7 “(H) commodity,

8 “(I) collectible (within the meaning of sec-
9 tion 408(m)), or

10 “(J) any other asset specified in regula-
11 tions prescribed by the Secretary.

12 “(4) LOOK-THRU RULES.—

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

22 “(B) 10-PERCENT INTEREST.—The term
23 ‘10-percent interest’ means—

24 “(i) in the case of an interest in a cor-
25 poration, ownership of at least 10 percent

1 (by vote or value) of the stock in such cor-
2 poration,

3 “(ii) in the case of an interest in a
4 partnership, ownership of at least 10 per-
5 cent of the capital or profits interest in the
6 partnership, and

7 “(iii) in any other case, ownership of
8 at least 10 percent of the beneficial inter-
9 ests in the entity.

10 “(5) COORDINATION WITH SUBSECTION (b).—

11 Subsection (b) shall apply after the application of
12 this subsection.

13 “(e) LIMITATION ON MINORITY DISCOUNTS.—For
14 purposes of this chapter and chapter 12, in the case of
15 the transfer of any interest in an entity other than an in-
16 terest which is actively traded (within the meaning of sec-
17 tion 1092), no discount shall be allowed by reason of the
18 fact that the transferee does not have control of such enti-
19 ty, or by reason of the lack of marketability of the interest,
20 if the transferor, the transferee, and members of the fam-
21 ily (as defined in section 2032A(e)(2)) of the transferor
22 and transferee—

23 “(1) have control of such entity, or

24 “(2) own the majority of the ownership inter-
25 ests (by value) in such entity.”.

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

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

6 (a) IN GENERAL.—Subsection (b) of section 2702 of
7 the Internal Revenue Code of 1986 is amended—

8 (1) by redesignating paragraphs (1), (2), and
9 (3) as subparagraphs (A), (B), and (C), respectively,
10 and by moving such subparagraphs (as so redesign-
11 nated) 2 ems to the right;

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

14 “(1) IN GENERAL.—For purposes of”;

15 (3) by striking “paragraph (1) or (2)” in para-
16 graph (1)(C) (as so redesignated) and inserting
17 “subparagraph (A) or (B)”; and

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

20 “(2) ADDITIONAL REQUIREMENTS WITH RE-
21 SPECT TO GRANTOR RETAINED ANNUITIES.—For
22 purposes of subsection (a), in the case of an interest
23 described in paragraph (1)(A) (determined without
24 regard to this paragraph) which is retained by the

1 transferor, such interest shall be treated as de-
2 scribed in such paragraph only if—

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

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

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

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

15 “(I) 25 percent of the fair mar-
16 ket value of the property in the trust,
17 or

18 “(II) \$500,000, and

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

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

1 **SEC. 8. CERTAIN TRANSFER TAX RULES APPLICABLE TO**
2 **GRANTOR TRUSTS.**

3 (a) IN GENERAL.—Subtitle B of the Internal Rev-
4 enue Code of 1986 is amended by adding at the end the
5 following new chapter:

6 **“CHAPTER 16—SPECIAL RULES FOR**
7 **GRANTOR TRUSTS**

“Sec. 2901. Application of transfer taxes.

8 **“SEC. 2901. APPLICATION OF TRANSFER TAXES.**

9 “(a) IN GENERAL.—In the case of any portion of a
10 trust to which this section applies—

11 “(1) the value of the gross estate of the de-
12 ceased deemed owner of such portion shall include
13 all assets attributable to that portion at the time of
14 the death of such owner,

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

19 “(3) if at any time during the life of the
20 deemed owner of such portion, such owner ceases to
21 be treated as the owner of such portion under sub-
22 part E of part 1 of subchapter J of chapter 1, all
23 assets attributable to such portion at such time shall
24 be treated for purposes of chapter 12 as a transfer
25 by gift made by the deemed owner.

1 “(b) PORTION OF TRUST TO WHICH SECTION AP-
2 PLIES.—This section shall apply to—

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

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

11 For purposes of paragraph (2), the portion of the trust
12 described with respect to a transaction is the portion of
13 the trust attributable to the property received by the trust
14 in such transaction, including all retained income there-
15 from, appreciation thereon, and reinvestments thereof, net
16 of the amount of consideration received by the deemed
17 owner in such transaction.

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

21 “(d) DEEMED OWNER DEFINED.—For purposes of
22 this section, the term ‘deemed owner’ means any person
23 who is treated as the owner of a portion of a trust under
24 subpart E of part 1 of subchapter J of chapter 1.

1 “(e) REDUCTION FOR TAXABLE GIFTS TO TRUST
 2 MADE BY OWNER.—The amount to which subsection (a)
 3 applies shall be reduced by the value of any transfer by
 4 gift by the deemed owner to the trust previously taken
 5 into account by the deemed owner under chapter 12.

6 “(f) LIABILITY FOR PAYMENT OF TAX.—Any tax im-
 7 posed pursuant to subsection (a) shall be a liability of the
 8 trust.”.

9 (b) CLERICAL AMENDMENT.—The table of chapters
 10 for subtitle B of such Code is amended by adding at the
 11 end the following new item:

“CHAPTER 16. SPECIAL RULES FOR GRANTOR TRUSTS”.

12 (c) EFFECTIVE DATE.—The amendments made by
 13 this section shall apply—

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

16 (2) to any portion of a trust established before
 17 the date of the enactment of this Act which is attrib-
 18 utable to a contribution made on or after such date,
 19 and

20 (3) to any portion of a trust established before
 21 the date of the enactment of this Act to which sec-
 22 tion 2901(a) of the Internal Revenue Code of 1986
 23 (as added by subsection (a)) applies by reason of a
 24 transaction described in section 2901(b)(2) of such
 25 Code on or after such date.

1 **SEC. 9. ELIMINATION OF GENERATION-SKIPPING TRANS-**
2 **FER TAX EXEMPTION FOR CERTAIN TRUSTS.**

3 (a) IN GENERAL.—Section 2642 of the Internal Rev-
4 enue Code of 1986 is amended by adding at the end the
5 following new subsection:

6 “(h) ELIMINATION OF GST EXEMPTION FOR CER-
7 TAIN TRUSTS.—

8 “(1) IN GENERAL.—

9 “(A) TRANSFERS FROM NON-QUALIFYING
10 TRUSTS.—In the case of any generation-skip-
11 ping transfer made from a trust that is not a
12 qualifying trust, the inclusion ratio with respect
13 to any property transferred in such transfer
14 shall be 1.

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

20 “(2) TRUSTS CREATED BEFORE DATE OF EN-
21 ACTMENT.—In the case of any trust created before
22 the date of the enactment of this subsection, such
23 trust shall be deemed to be a qualifying trust for a
24 period of 50 years after the date of the enactment
25 of this subsection.

1 “(3) DATE OF CREATION OF CERTAIN DEEMED
2 SEPARATE TRUSTS.—In the case of any portion of a
3 trust which is treated as a separate trust under sec-
4 tion 2654(b)(1), such separate trust shall be treated
5 as created on the date of the first transfer described
6 in such section with respect to such separate trust.

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

13 “(A) the date of the creation of such trans-
14 feree trust, or

15 “(B) the date of the creation of the trans-
16 feror trust.

17 In the case of multiple transfers to which the pre-
18 ceding sentence applies, the date of the creation of
19 the transferor trust shall be determined under the
20 preceding sentence before the application of the pre-
21 ceding sentence to determine the date of the creation
22 of the transferee trust.

23 “(5) REGULATIONS.—The Secretary may pre-
24 scribe such regulations or other guidance as may be

1 necessary or appropriate to carry out this sub-
2 section.”.

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

6 **SEC. 10. SIMPLIFYING GIFT TAX EXCLUSION FOR ANNUAL**
7 **GIFTS.**

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

11 “(1) **IN GENERAL.**—

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

18 “(B) **CUMULATIVE LIMIT PER DONOR.**—

19 “(i) **IN GENERAL.**—The aggregate
20 amount excluded under subparagraph (A)
21 with respect to all transfers described in
22 clause (ii) made by the donor during the
23 calendar year shall not exceed twice the
24 dollar amount in effect under such sub-
25 paragraph for such calendar year.

1 “(ii) TRANSFERS SUBJECT TO LIMITA-
2 TION.—The transfers described in this
3 clause are—

4 “(I) a transfer in trust,

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

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

9 “(IV) any other transfer of prop-
10 erty that, without regard to with-
11 drawal, put, or other such rights in
12 the donee, cannot immediately be liq-
13 uidated by the donee.”.

14 (b) CONFORMING AMENDMENT.—Section 2503 of the
15 Internal Revenue Code of 1986 is amended by striking
16 subsection (c).

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

22 (d) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to any calendar year beginning
24 after the date of the enactment of this Act.

○