

111TH CONGRESS
2^D SESSION

S. _____

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

Mr. SANDERS (for himself, Mr. WHITEHOUSE, and Mr. HARKIN) introduced the following bill; which was read twice and referred to the Committee on _____

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 “Responsible Estate
5 Tax Act”.

6 **SEC. 2. REINSTATEMENT AND EXTENSION OF ESTATE AND**
7 **GENERATION-SKIPPING TAXES; REPEAL OF**
8 **CARRYOVER BASIS.**

9 (a) IN GENERAL.—The following provisions of the
10 Economic Growth and Tax Relief Reconciliation Act of

1 2001, and the amendments made by such provisions, are
2 hereby repealed:

3 (1) Subtitles A and E of title V.

4 (2) Subsection (d), and so much of subsection
5 (f)(3) as relates to subsection (d), of section 511.

6 (3) Paragraph (2) of subsection (b), and para-
7 graph (2) of subsection (e), of section 521.

8 Any provision of the Internal Revenue Code of 1986
9 amended by such provisions are amended to read as such
10 provisions would read if such sections had never been en-
11 acted.

12 (b) SUNSET NOT TO APPLY.—

13 (1) Subsection (a) of section 901 of the Eco-
14 nomic Growth and Tax Relief Reconciliation Act of
15 2001 is amended by striking “this Act” and all that
16 follows and inserting “this Act (other than title V)
17 shall not apply to taxable, plan, or limitation years
18 beginning after December 31, 2010.”.

19 (2) Subsection (b) of such section 901 is
20 amended by striking “, estates, gifts, and transfers”.

21 **SEC. 3. MODIFICATION OF RATES AND MAINTENANCE OF**
22 **UNIFIED CREDIT AGAINST THE ESTATE TAX.**

23 (a) MODIFICATION OF RATES.—

24 (1) IN GENERAL.—The table in paragraph (1)
25 of section 2001(c) of the Internal Revenue Code of

1 1986 is amended by striking the last 5 rows and in-
 2 serting the following:

“Over \$750,000 but not over \$3,500,000	\$248,300 plus 39 per- cent 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 ex- cess 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 ex- cess of such amount over \$10,000,000
Over \$50,000,000	\$24,245,800 plus 55 percent of the ex- cess of such amount over \$50,000,000”.

3 (2) SURTAX ON WEALTHY ESTATES.—Para-
 4 graph (2) of section 2011(c) of such Code is amend-
 5 ed to read as follows:

6 “(2) SURTAX ON ESTATES OVER \$500,000,000.—
 7 Notwithstanding paragraph (1), if the amount with
 8 respect to which the tentative tax to be computed is
 9 over \$500,000,000, the rate of tax with respect to
 10 the amount in excess of \$500,000,000 shall be 65
 11 percent.”.

12 (b) MAINTENANCE OF UNIFIED CREDIT.—The table
 13 in subsection (c) of section 2010 of the Internal Revenue
 14 Code of 1986 (relating to applicable credit amount) is
 15 amended by inserting “and thereafter” after “2009”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to estates of decedents dying, and
3 gifts made, after December 31, 2009.

4 **SEC. 4. MODIFICATION OF RULES FOR VALUE OF CERTAIN**
5 **FARM, ETC., REAL PROPERTY.**

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

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

11 (1) by striking “1998” and inserting “2009”,

12 (2) by striking “\$750,000” and inserting
13 “\$3,000,000” in subparagraph (A), and

14 (3) by striking “calendar year 1997” and in-
15 serting “calendar year 2008” in subparagraph (B).

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to estates of decedents dying, and
18 gifts made, after December 31, 2009.

19 **SEC. 5. MODIFICATION OF ESTATE TAX RULES WITH RE-**
20 **SPECT TO LAND SUBJECT TO CONSERVATION**
21 **EASEMENTS.**

22 (a) MODIFICATION OF EXCLUSIION LIMITATION.—
23 The table in paragraph (3) of section 2031(c) of the Inter-
24 nal Revenue Code of 1986 is amended—

1 (1) by striking “or thereafter” in the last row
2 and inserting “through 2009”, and

3 (2) by adding at the end the following row:

“2010 and thereafter \$2,000,000”.

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

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to estates of decedents dying, and
10 gifts made, after December 31, 2009.

11 **SEC. 6. CONSISTENT BASIS REPORTING BETWEEN ESTATE**
12 **AND PERSON ACQUIRING PROPERTY FROM**
13 **DECEDENT.**

14 (a) IN GENERAL.—Subpart A of part III of sub-
15 chapter A of chapter 61 of the Internal Revenue Code of
16 1986 is amended by inserting after section 6034A the fol-
17 lowing new section:

18 **“SEC. 6035. BASIS INFORMATION TO PERSONS ACQUIRING**
19 **PROPERTY FROM DECEDENT.**

20 “(a) GENERAL RULE.—The executor of any estate
21 required to file a return under section 6018(a) shall, on
22 or before the date on which such return was required to
23 be filed, furnish to the Secretary and to each person ac-
24 quiring property from the decedent a statement identi-

1 fying the basis of such property as determined under sec-
2 tion 1014 and such other information with respect to such
3 property as the Secretary may prescribe.

4 “(b) RECIPIENT’S RETURN MUST BE CONSISTENT
5 WITH ESTATE RETURN.—A recipient of any property to
6 which subsection (a) applies shall, on such recipient’s re-
7 turn regarding any gain or loss with respect to such prop-
8 erty, treat such property in a manner which is consistent
9 with the treatment of such property on the estate’s return.

10 “(c) EFFECT OF INCONSISTENT REPORTING.—Any
11 adjustment required to make the treatment of any prop-
12 erty to which subsection (a) applies by the recipient of
13 such property consistent with the treatment of such prop-
14 erty on the estate’s return shall be treated as arising out
15 of mathematical or clerical errors and assessed according
16 to section 6213(b)(1). Paragraph (2) of section 6213(b)
17 shall not apply to any assessment referred to in the pre-
18 ceding sentence.

19 “(d) ADDITION TO TAX FOR FAILURE TO COMPLY
20 WITH SECTION.—For addition to tax in the case of a re-
21 cipient’s negligence in connection with, or disregard of, the
22 requirements of this section, see part II of subchapter A
23 of chapter 68.

1 “(e) REGULATIONS.—The Secretary shall prescribe
2 such regulations as necessary to carry out this section, in-
3 cluding regulations relating to—

4 “(1) situations in which no estate tax return is
5 required to be filed or in which gifts are excluded
6 from gift tax under section 2503,

7 “(2) situations in which the surviving joint ten-
8 ant or other recipient may have better information
9 than the executor, and

10 “(3) relating to the timing of the required re-
11 porting in the event of adjustments to the reported
12 value subsequent to the filing of an estate or gift tax
13 return.”.

14 (b) PENALTY FOR FAILURE TO FILE.—

15 (1) RETURN.—Subparagraph (B) of section
16 6724(d)(1) of the Internal Revenue Code of 1986 is
17 amended by striking “or” at the end of clause
18 (xxiv), by striking “and” at the end of clause (xxv)
19 and inserting “or”, and by adding at the end the fol-
20 lowing new clause:

21 “(xxvi) section 6035 (relating to re-
22 turns relating to basis information to per-
23 sons acquiring property from decedent),
24 and”.

1 (2) STATEMENT.—Subparagraph (A) of section
2 6724(d)(2)(A) of such Code is amended by inserting
3 “6035,” after “6034A,”.

4 (c) CONFORMING AMENDMENT.—The table of sec-
5 tions for subpart A of part III of subchapter A of chapter
6 61 of the Internal Revenue Code of 1986 is amended by
7 inserting after the item relating to section 6034A the fol-
8 lowing new item:

 “Sec. 6035. Basis information to persons acquiring property from decedent.”.

9 (d) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to transfers from estates for which
11 returns are filed after the date of the enactment of this
12 Act.

13 **SEC. 7. VALUATION RULES FOR CERTAIN TRANSFERS OF**
14 **NONBUSINESS ASSETS; LIMITATION ON MI-**
15 **NORITY DISCOUNTS.**

16 (a) IN GENERAL.—Section 2031 of the Internal Rev-
17 enue Code of 1986 (relating to definition of gross estate)
18 is amended by redesignating subsection (d) as subsection
19 (f) and by inserting after subsection (e) the following new
20 subsections:

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

24 “(1) IN GENERAL.—In the case of the transfer
25 of any interest in an entity other than an interest

1 which is actively traded (within the meaning of sec-
2 tion 1092)—

3 “(A) the value of any nonbusiness assets
4 held by the entity shall be determined as if the
5 transferor had transferred such assets directly
6 to the transferee (and no valuation discount
7 shall be allowed with respect to such nonbusi-
8 ness assets), and

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

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

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

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

23 “(i) the asset is property described in
24 paragraph (1) or (4) of section 1221(a) or

1 is a hedge with respect to such property,
2 or

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

10 For purposes of clause (ii), material participa-
11 tion shall be determined under the rules of sec-
12 tion 469(h), except that section 469(h)(3) shall
13 be applied without regard to the limitation to
14 farming activity.

15 “(C) EXCEPTION FOR WORKING CAP-
16 ITAL.—Any asset (including a passive asset)
17 which is held as a part of the reasonably re-
18 quired working capital needs of a trade or busi-
19 ness shall be treated as used in the active con-
20 duct of a trade or business.

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

23 “(A) cash or cash equivalents,

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

4 “(C) evidence of indebtedness, option, for-
5 ward or futures contract, notional principal con-
6 tract, or derivative,

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

9 “(E) annuity,

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

13 “(G) asset (other than a patent, trade-
14 mark, or copyright) which produces royalty in-
15 come,

16 “(H) commodity,

17 “(I) collectible (within the meaning of sec-
18 tion 401(m)), or

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

21 “(4) LOOK-THRU RULES.—

22 “(A) IN GENERAL.—If a nonbusiness asset
23 of an entity consists of a 10-percent interest in
24 any other entity, this subsection shall be ap-
25 plied by disregarding the 10-percent interest

1 and by treating the entity as holding directly its
2 ratable share of the assets of the other entity.
3 This subparagraph shall be applied successively
4 to any 10-percent interest of such other entity
5 in any other entity.

6 “(B) 10-PERCENT INTEREST.—The term
7 ‘10-percent interest’ means—

8 “(i) in the case of an interest in a cor-
9 poration, ownership of at least 10 percent
10 (by vote or value) of the stock in such cor-
11 poration,

12 “(ii) in the case of an interest in a
13 partnership, ownership of at least 10 per-
14 cent of the capital or profits interest in the
15 partnership, and

16 “(iii) in any other case, ownership of
17 at least 10 percent of the beneficial inter-
18 ests in the entity.

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

22 “(e) LIMITATION ON MINORITY DISCOUNTS.—For
23 purposes of this chapter and chapter 12, in the case of
24 the transfer of any interest in an entity other than an in-
25 terest which is actively traded (within the meaning of sec-

1 tion 1092), no discount shall be allowed by reason of the
2 fact that the transferee does not have control of such enti-
3 ty if the transferee and members of the family (as defined
4 in section 2032A(e)(2)) of the transferee have control of
5 such entity.”.

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

9 **SEC. 8. REQUIRED MINIMUM 10-YEAR TERM, ETC., FOR**
10 **GRANTOR RETAINED ANNUITY TRUSTS.**

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

13 (1) by redesignating paragraphs (1), (2) and
14 (3) as subparagraphs (A), (B), and (C), respectively,
15 and by moving such subparagraphs (as so redesign-
16 ated) 2 ems to the right;

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

19 “(1) IN GENERAL.—For purposes of”;

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

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

1 “(2) ADDITIONAL REQUIREMENTS WITH RE-
2 SPECT TO GRANTOR RETAINED ANNUITIES.—For
3 purposes of subsection (a), in the case of an interest
4 described in paragraph (1)(A) (determined without
5 regard to this paragraph) which is retained by the
6 transferor, such interest shall be treated as de-
7 scribed in such paragraph only if—

8 “(A) the right to receive the fixed amounts
9 referred to in such paragraph is for a term of
10 not less than 10 years,

11 “(B) such fixed amounts, when determined
12 on an annual basis, do not decrease relative to
13 any prior year during the first 10 years of the
14 term referred to in subparagraph (A), and

15 “(C) the remainder interest has a value
16 greater than zero determined as of the time of
17 the transfer.”.

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