

Calendar No. 496

109TH CONGRESS
2^D SESSION**H. R. 5638**

IN THE SENATE OF THE UNITED STATES

JUNE 23, 2006

Read the first time

JUNE 26, 2006

Read the second time and placed on the calendar

AN ACT

To amend the Internal Revenue Code of 1986 to increase the unified credit against the estate tax to an exclusion equivalent of \$5,000,000 and to repeal the sunset provision for the 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 “Permanent Estate Tax
5 Relief Act of 2006”.

1 **SEC. 2. REFORM AND EXTENSION OF ESTATE TAX AFTER**
2 **2009.**

3 (a) RESTORATION OF UNIFIED CREDIT AGAINST
4 GIFT TAX.—Paragraph (1) of section 2505(a) of the In-
5 ternal Revenue Code of 1986 (relating to general rule for
6 unified credit against gift tax), after the application of
7 subsection (g), is amended by striking “(determined as if
8 the applicable exclusion amount were \$1,000,000)”.

9 (b) EXCLUSION EQUIVALENT OF UNIFIED CREDIT
10 EQUAL TO \$5,000,000.—Subsection (c) of section 2010
11 of such Code (relating to unified credit against estate tax)
12 is amended to read as follows:

13 “(c) APPLICABLE CREDIT AMOUNT.—

14 “(1) IN GENERAL.—For purposes of this sec-
15 tion, the applicable credit amount is the amount of
16 the tentative tax which would be determined under
17 the rate schedule set forth in section 2001(c) if the
18 amount with respect to which such tentative tax is
19 to be computed were the applicable exclusion
20 amount.

21 “(2) APPLICABLE EXCLUSION AMOUNT.—

22 “(A) IN GENERAL.—For purposes of this
23 subsection, the applicable exclusion amount is
24 \$5,000,000.

25 “(B) INFLATION ADJUSTMENT.—In the
26 case of any decedent dying in a calendar year

1 after 2010, the dollar amount in subparagraph
2 (A) shall be increased by an amount equal to—
3 “(i) such dollar amount, multiplied by
4 “(ii) the cost-of-living adjustment de-
5 termined under section 1(f)(3) for such
6 calendar year by substituting ‘calendar
7 year 2009’ for ‘calendar year 1992’ in sub-
8 paragraph (B) thereof.

9 If any amount as adjusted under the preceding
10 sentence is not a multiple of \$100,000, such
11 amount shall be rounded to the nearest multiple
12 of \$100,000.”.

13 (c) RATE SCHEDULE.—

14 (1) IN GENERAL.—Subsection (c) of section
15 2001 of such Code (relating to rate schedule) is
16 amended to read as follows:

17 “(c) RATE SCHEDULE.—The tentative tax is equal
18 to the sum of—

19 “(1) the product of the rate specified in section
20 1(h)(1)(C) in effect on the date of the decedent’s
21 death multiplied by so much of the sum described in
22 subsection (b)(1) as does not exceed \$25,000,000,
23 and

24 “(2) the product of twice the rate specified in
25 section 1(h)(1)(C) in effect on the date of the dece-

1 dent’s death multiplied by so much of the sum de-
2 scribed in subsection (b)(1) as equals or exceeds
3 \$25,000,000.”.

4 (2) CONFORMING AMENDMENT.—Section
5 2502(a) of such Code (relating computation of tax),
6 after the application of subsection (g), is amended
7 by adding at the end the following flush sentence:
8 “In computing the tentative tax under section 2001(c) for
9 purposes of this subsection, ‘the last day of the calendar
10 year in which the gift was made’ shall be substituted for
11 ‘the date of the decedent’s death’ each place it appears
12 in such section.”.

13 (d) MODIFICATIONS OF ESTATE AND GIFT TAXES TO
14 REFLECT DIFFERENCES IN UNIFIED CREDIT RESULTING
15 FROM DIFFERENT TAX RATES.—

16 (1) ESTATE TAX.—

17 (A) IN GENERAL.—Section 2001(b)(2) of
18 such Code (relating to computation of tax) is
19 amended by striking “if the provisions of sub-
20 section (c) (as in effect at the decedent’s
21 death)” and inserting “if the modifications de-
22 scribed in subsection (g)”.

23 (B) MODIFICATIONS.—Section 2001 of
24 such Code is amended by adding at the end the
25 following new subsection:

1 “(g) MODIFICATIONS TO GIFT TAX PAYABLE TO RE-
2 FLECT DIFFERENT TAX RATES.—For purposes of apply-
3 ing subsection (b)(2) with respect to 1 or more gifts, the
4 rates of tax under subsection (c) in effect at the decedent’s
5 death shall, in lieu of the rates of tax in effect at the time
6 of such gifts, be used both to compute—

7 “(1) the tax imposed by chapter 12 with respect
8 to such gifts, and

9 “(2) the credit allowed against such tax under
10 section 2505, including in computing—

11 “(A) the applicable credit amount under
12 section 2505(a)(1), and

13 “(B) the sum of the amounts allowed as a
14 credit for all preceding periods under section
15 2505(a)(2).

16 For purposes of paragraph (2)(A), the applicable
17 credit amount for any calendar year before 1998 is
18 the amount which would be determined under sec-
19 tion 2010(c) if the applicable exclusion amount were
20 the dollar amount under section 6018(a)(1) for such
21 year.”.

22 (2) GIFT TAX.—Section 2505(a) of such Code
23 (relating to unified credit against gift tax), after the
24 application of subsection (g), is amended by adding
25 at the end the following new flush sentence:

1 “For purposes of applying paragraph (2) for any calendar
2 year, the rates of tax used in computing the tax under
3 section 2502(a)(2) for such calendar year shall, in lieu of
4 the rates of tax in effect for preceding calendar periods,
5 be used in determining the amounts allowable as a credit
6 under this section for all preceding calendar periods.”.

7 (e) REPEAL OF DEDUCTION FOR STATE DEATH
8 TAXES.—

9 (1) IN GENERAL.—Section 2058 of such Code
10 (relating to State death taxes) is amended by adding
11 at the end the following:

12 “(c) TERMINATION.—This section shall not apply to
13 the estates of decedents dying after December 31, 2009.”.

14 (2) CONFORMING AMENDMENT.—Section
15 2106(a)(4) of such Code is amended by adding at
16 the end the following new sentence: “This paragraph
17 shall not apply to the estates of decedents dying
18 after December 31, 2009.”.

19 (f) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to estates of decedents dying, gen-
21 eration-skipping transfers, and gifts made, after Decem-
22 ber 31, 2009.

23 (g) ADDITIONAL MODIFICATIONS TO ESTATE TAX.—

24 (1) IN GENERAL.—The following provisions of
25 the Economic Growth and Tax Relief Reconciliation

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

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

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

7 (C) Paragraph (2) of subsection (b), and
8 paragraph (2) of subsection (e), of section 521.

9 The Internal Revenue Code of 1986 shall be applied
10 as if such provisions and amendments had never
11 been enacted.

12 (2) SUNSET NOT TO APPLY TO TITLE V OF
13 EGTRRA.—Section 901 of the Economic Growth and
14 Tax Relief Reconciliation Act of 2001 shall not
15 apply to title V of such Act.

16 (3) REPEAL OF DEADWOOD.—

17 (A) Sections 2011, 2057, and 2604 of the
18 Internal Revenue Code of 1986 are hereby re-
19 pealed.

20 (B) The table of sections for part II of
21 subchapter A of chapter 11 of such Code is
22 amended by striking the item relating to section
23 2011.

24 (C) The table of sections for part IV of
25 subchapter A of chapter 11 of such Code is

1 amended by striking the item relating to section
2 2057.

3 (D) The table of sections for subchapter A
4 of chapter 13 of such Code is amended by strik-
5 ing the item relating to section 2604.

6 **SEC. 3. UNIFIED CREDIT INCREASED BY UNUSED UNIFIED**
7 **CREDIT OF DECEASED SPOUSE.**

8 (a) IN GENERAL.—Subsection (c) of section 2010 of
9 the Internal Revenue Code of 1986 (defining applicable
10 credit amount), as amended by section 2(b), is amended
11 by striking paragraph (2) and inserting the following new
12 paragraphs:

13 “(2) APPLICABLE EXCLUSION AMOUNT.—For
14 purposes of this subsection, the applicable exclusion
15 amount is the sum of—

16 “(A) the basic exclusion amount, and

17 “(B) in the case of a surviving spouse, the
18 aggregate deceased spousal unused exclusion
19 amount.

20 “(3) BASIC EXCLUSION AMOUNT.—

21 “(A) IN GENERAL.—For purposes of this
22 subsection, the basic exclusion amount is
23 \$5,000,000.

24 “(B) INFLATION ADJUSTMENT.—In the
25 case of any decedent dying in a calendar year

1 after 2010, the dollar amount in subparagraph
2 (A) shall be increased by an amount equal to—

3 “(i) such dollar amount, multiplied by

4 “(ii) the cost-of-living adjustment de-
5 termined under section 1(f)(3) for such
6 calendar year by substituting ‘calendar
7 year 2009’ for ‘calendar year 1992’ in sub-
8 paragraph (B) thereof.

9 If any amount as adjusted under the preceding
10 sentence is not a multiple of \$100,000, such
11 amount shall be rounded to the nearest multiple
12 of \$100,000.

13 “(4) AGGREGATE DECEASED SPOUSAL UNUSED
14 EXCLUSION AMOUNT.—For purposes of this sub-
15 section, the term ‘aggregate deceased spousal unused
16 exclusion amount’ means the lesser of—

17 “(A) the basic exclusion amount, or

18 “(B) the sum of the deceased spousal un-
19 used exclusion amounts of the surviving spouse.

20 “(5) DECEASED SPOUSAL UNUSED EXCLUSION
21 AMOUNT.—For purposes of this subsection, the term
22 ‘deceased spousal unused exclusion amount’ means,
23 with respect to the surviving spouse of any deceased
24 spouse dying after December 31, 2009, the excess (if
25 any) of—

1 “(A) the applicable exclusion amount of
2 the deceased spouse, over

3 “(B) the amount with respect to which the
4 tentative tax is determined under section
5 2001(b)(1) on the estate of such deceased
6 spouse.

7 “(6) SPECIAL RULES.—

8 “(A) ELECTION REQUIRED.—A deceased
9 spousal unused exclusion amount may not be
10 taken into account by a surviving spouse under
11 paragraph (5) unless the executor of the estate
12 of the deceased spouse files an estate tax return
13 on which such amount is computed and makes
14 an election on such return that such amount
15 may be so taken into account. Such election,
16 once made, shall be irrevocable. No election
17 may be made under this subparagraph if such
18 return is filed after the time prescribed by law
19 (including extensions) for filing such return.

20 “(B) EXAMINATION OF PRIOR RETURNS
21 AFTER EXPIRATION OF PERIOD OF LIMITATIONS
22 WITH RESPECT TO DECEASED SPOUSAL UN-
23 USED EXCLUSION AMOUNT.—Notwithstanding
24 any period of limitation in section 6501, after
25 the time has expired under section 6501 within

1 which a tax may be assessed under chapter 11
2 or 12 with respect to a deceased spousal unused
3 exclusion amount, the Secretary may examine a
4 return of the deceased spouse to make deter-
5 minations with respect to such amount for pur-
6 poses of carrying out this subsection.

7 “(7) REGULATIONS.—The Secretary shall pre-
8 scribe such regulations as may be necessary or ap-
9 propriate to carry out this subsection.”.

10 (b) CONFORMING AMENDMENTS.—

11 (1) Paragraph (1) of section 2505(a) of such
12 Code, as amended by section 2, is amended to read
13 as follows:

14 “(1) the applicable credit amount under section
15 2010(c) which would apply if the donor died as of
16 the end of the calendar year, reduced by”.

17 (2) Section 2631(c) of such Code is amended by
18 striking “the applicable exclusion amount” and in-
19 serting “the basic exclusion amount”.

20 (3) Section 6018(a)(1) of such Code, after the
21 application of section 2(g), is amended by striking
22 “applicable exclusion amount” and inserting “basic
23 exclusion amount”.

24 (c) EFFECTIVE DATE.—The amendments made by
25 this section shall apply to estates of decedents dying, gen-

1 eration-skipping transfers, and gifts made, after Decem-
2 ber 31, 2009.

3 **SEC. 4. DEDUCTION FOR QUALIFIED TIMBER GAIN.**

4 (a) IN GENERAL.—Part I of subchapter P of chapter
5 1 of the Internal Revenue Code of 1986 is amended by
6 adding at the end the following new section:

7 **“SEC. 1203. DEDUCTION FOR QUALIFIED TIMBER GAIN.**

8 “(a) IN GENERAL.—In the case of a taxpayer which
9 elects the application of this section for a taxable year,
10 there shall be allowed a deduction against gross income
11 equal to 60 percent of the lesser of—

12 “(1) the taxpayer’s qualified timber gain for
13 such year, or

14 “(2) the taxpayer’s net capital gain for such
15 year.

16 “(b) QUALIFIED TIMBER GAIN.—For purposes of
17 this section, the term ‘qualified timber gain’ means, with
18 respect to any taxpayer for any taxable year, the excess
19 (if any) of—

20 “(1) the sum of the taxpayer’s gains described
21 in subsections (a) and (b) of section 631 for such
22 year, over

23 “(2) the sum of the taxpayer’s losses described
24 in such subsections for such year.

1 “(c) SPECIAL RULES FOR PASS-THRU ENTITIES.—
2 In the case of any qualified timber gain of a pass-thru
3 entity (as defined in section 1(h)(10))—

4 “(1) the election under this section shall be
5 made separately by each taxpayer subject to tax on
6 such gain, and

7 “(2) the Secretary may prescribe such regula-
8 tions as are appropriate to apply this section to such
9 gain.

10 “(d) TERMINATION.—No disposition of timber after
11 December 31, 2008, shall be taken into account under
12 subsection (b).”.

13 (b) COORDINATION WITH MAXIMUM CAPITAL GAINS
14 RATES.—

15 (1) TAXPAYERS OTHER THAN CORPORA-
16 TIONS.—Paragraph (2) of section 1(h) of such Code
17 is amended to read as follows:

18 “(2) REDUCTION OF NET CAPITAL GAIN.—For
19 purposes of this subsection, the net capital gain for
20 any taxable year shall be reduced (but not below
21 zero) by the sum of—

22 “(A) the amount which the taxpayer takes
23 into account as investment income under sec-
24 tion 163(d)(4)(B)(iii), and

1 “(B) in the case of a taxable year with re-
2 spect to which an election is in effect under sec-
3 tion 1203, the lesser of—

4 “(i) the amount described in para-
5 graph (1) of section 1203(a), or

6 “(ii) the amount described in para-
7 graph (2) of such section.”.

8 (2) CORPORATIONS.—Section 1201 of such
9 Code is amended by redesignating subsection (b) as
10 subsection (c) and inserting after subsection (a) the
11 following new subsection:

12 “(b) QUALIFIED TIMBER GAIN NOT TAKEN INTO AC-
13 COUNT.—For purposes of this section, in the case of a
14 corporation with respect to which an election is in effect
15 under section 1203, the net capital gain for any taxable
16 year shall be reduced (but not below zero) by the corpora-
17 tion’s qualified timber gain (as defined in section
18 1203(b)).”.

19 (c) DEDUCTION ALLOWED WHETHER OR NOT INDI-
20 VIDUAL ITEMIZES OTHER DEDUCTIONS.—Subsection (a)
21 of section 62 of such Code is amended by inserting before
22 the last sentence the following new paragraph:

23 “(21) QUALIFIED TIMBER GAINS.—The deduc-
24 tion allowed by section 1203.”.

1 (d) DEDUCTION ALLOWED IN COMPUTING AD-
2 JUSTED CURRENT EARNINGS.—Subparagraph (C) of sec-
3 tion 56(g)(4) of such Code is amended by adding at the
4 end the following new clause:

5 “(vii) DEDUCTION FOR QUALIFIED
6 TIMBER GAIN.—Clause (i) shall not apply
7 to any deduction allowed under section
8 1203.”.

9 (e) DEDUCTION ALLOWED IN COMPUTING TAXABLE
10 INCOME OF ELECTING SMALL BUSINESS TRUSTS.—Sub-
11 paragraph (C) of section 641(c)(2) of such Code is amend-
12 ed by inserting after clause (iii) the following new clause:

13 “(iv) The deduction allowed under
14 section 1203.”.

15 (f) CONFORMING AMENDMENTS.—

16 (1) Subparagraph (B) of section 172(d)(2) of
17 such Code is amended to read as follows:

18 “(B) the exclusion under section 1202 and
19 the deduction under section 1203 shall not be
20 allowed.”.

21 (2) Paragraph (4) of section 642(c) of such
22 Code is amended by striking the first sentence and
23 inserting the following: “To the extent that the
24 amount otherwise allowable as a deduction under
25 this subsection consists of gain described in section

1 1202(a) or qualified timber gain (as defined in sec-
2 tion 1203(b)), proper adjustment shall be made for
3 any exclusion allowable to the estate or trust under
4 section 1202 and for any deduction allowable to the
5 estate or trust under section 1203.”.

6 (3) Paragraph (3) of section 643(a) of such
7 Code is amended by striking the last sentence and
8 inserting the following: “The exclusion under section
9 1202 and the deduction under section 1203 shall not
10 be taken into account.”.

11 (4) Subparagraph (C) of section 643(a)(6) of
12 such Code is amended to read as follows:

13 “(C) Paragraph (3) shall not apply to a
14 foreign trust. In the case of such a trust—

15 “(i) there shall be included gains from
16 the sale or exchange of capital assets, re-
17 duced by losses from such sales or ex-
18 changes to the extent such losses do not
19 exceed gains from such sales or exchanges,
20 and

21 “(ii) the deduction under section 1203
22 shall not be taken into account.”.

23 (5) Paragraph (4) of section 691(c) of such
24 Code is amended by inserting “1203,” after
25 “1202,”.

1 (6) Paragraph (2) of section 871(a) of such
2 Code is amended by striking “section 1202” and in-
3 serting “sections 1202 and 1203”.

4 (7) The table of sections for part I of sub-
5 chapter P of chapter 1 of such Code is amended by
6 adding at the end the following new item:

“Sec. 1203. Deduction for qualified timber gain.”.

7 (g) EFFECTIVE DATE.—

8 (1) IN GENERAL.—The amendments made by
9 this section shall apply to taxable years ending after
10 the date of the enactment of this Act.

11 (2) TAXABLE YEARS WHICH INCLUDE DATE OF
12 ENACTMENT.—In the case of any taxable year which
13 includes the date of the enactment of this Act, for
14 purposes of the Internal Revenue Code of 1986, the
15 taxpayer’s qualified timber gain shall not exceed the
16 excess that would be described in section 1203(b) of
17 such Code, as added by this section, if only disposi-
18 tions of timber after such date were taken into ac-
19 count.

Passed the House of Representatives June 22, 2006.

Attest:

KAREN L. HAAS,

Clerk.

Calendar No. 496

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AN ACT

To amend the Internal Revenue Code of 1986 to increase the unified credit against the estate tax to an exclusion equivalent of \$5,000,000 and to repeal the sunset provision for the estate and generation-skipping taxes, and for other purposes.

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