

111TH CONGRESS
1ST SESSION

S. 2784

To amend the Internal Revenue Code of 1986 to permanently extend the estate tax as in effect in 2009, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 17, 2009

Mr. CARPER (for himself and Mr. VOINOVICH) 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 permanently extend the estate tax as in effect in 2009, 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. PERMANENT EXTENSION OF ESTATE TAX AS IN**
4 **EFFECT IN 2009.**

5 (a) RESTORATION OF UNIFIED CREDIT AGAINST
6 GIFT TAX.—Paragraph (1) of section 2505(a) (relating
7 to general rule for unified credit against gift tax), after
8 the application of subsection (f), is amended by striking
9 “(determined as if the applicable exclusion amount were
10 \$1,000,000)”.

1 (b) EXCLUSION EQUIVALENT OF UNIFIED CREDIT
2 EQUAL TO \$3,500,000.—Subsection (c) of section 2010
3 of the Internal Revenue Code of 1986 (relating to unified
4 credit against estate tax) is amended to read as follows:

5 “(c) APPLICABLE CREDIT AMOUNT.—

6 “(1) IN GENERAL.—For purposes of this sec-
7 tion, the applicable credit amount is the amount of
8 the tentative tax which would be determined under
9 section 2001(c) if the amount with respect to which
10 such tentative tax is to be computed were equal to
11 the applicable exclusion amount.

12 “(2) APPLICABLE EXCLUSION AMOUNT.—

13 “(A) IN GENERAL.—For purposes of this
14 subsection, the applicable exclusion amount is
15 \$3,500,000.

16 “(B) INFLATION ADJUSTMENT.—In the
17 case of any decedent dying in a calendar year
18 after 2010, the dollar amount in subparagraph
19 (A) shall be increased by an amount equal to—

20 “(i) such dollar amount, multiplied by

21 “(ii) the cost-of-living adjustment de-
22 termined under section 1(f)(3) for such
23 calendar year by substituting ‘calendar
24 year 2009’ for ‘calendar year 1992’ in sub-
25 paragraph (B) thereof.

1 If any amount as adjusted under the preceding
2 sentence is not a multiple of \$10,000, such
3 amount shall be rounded to the nearest multiple
4 of \$10,000.”.

5 (c) MAXIMUM ESTATE TAX RATE EQUAL TO 45 PER-
6 CENT.—

7 (1) IN GENERAL.—Subsection (c) of section
8 2001 of the Internal Revenue Code of 1986 (relating
9 to imposition and rate of tax) is amended—

10 (A) by striking “but not over \$2,000,000”
11 in the table contained in paragraph (1),

12 (B) by striking the last 2 items in such
13 table,

14 (C) by striking “(1) IN GENERAL.—”, and

15 (D) by striking paragraph (2).

16 (2) CONFORMING AMENDMENT.—Paragraphs
17 (1) and (2) of section 2102(b) of such Code are
18 amended to read as follows:

19 “(1) IN GENERAL.—A credit in an amount that
20 would be determined under section 2010 as the ap-
21 plicable credit amount if the applicable exclusion
22 amount were \$60,000 shall be allowed against the
23 tax imposed by section 2101.

24 “(2) RESIDENTS OF POSSESSIONS OF THE
25 UNITED STATES.—In the case of a decedent who is

1 considered to be a ‘nonresident not a citizen of the
2 United States’ under section 2209, the credit al-
3 lowed under this subsection shall not be less than
4 the proportion of the amount that would be deter-
5 mined under section 2010 as the applicable credit
6 amount if the applicable exclusion amount were
7 \$175,000 which the value of that part of the dece-
8 dent’s gross estate which at the time of the dece-
9 dent’s death is situated in the United States bears
10 to the value of the decedent’s entire gross estate,
11 wherever situated.”.

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

15 (1) ESTATE TAX.—

16 (A) IN GENERAL.—Section 2001(b)(2) of
17 the Internal Revenue Code of 1986 (relating to
18 computation of tax) is amended by striking “if
19 the provisions of subsection (c) (as in effect at
20 the decedent’s death)” and inserting “if the
21 modifications described in subsection (g)”.

22 (B) MODIFICATIONS.—Section 2001 of
23 such Code is amended by adding at the end the
24 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) is amend-
24 ed by adding at the end the following new flush sen-
25 tence:

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

7 (e) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to estates of decedents dying, gen-
9 eration-skipping transfers, and gifts made, after Decem-
10 ber 31, 2009.

11 (f) ADDITIONAL MODIFICATIONS TO ESTATE TAX.—

12 (1) IN GENERAL.—The following provisions of
13 the Economic Growth and Tax Relief Reconciliation
14 Act of 2001, and the amendments made by such
15 provisions, are hereby repealed:

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

17 (B) Subsection (d), and so much of sub-
18 section (f)(3) as relates to subsection (d), of
19 section 511.

20 (C) Paragraph (2) of subsection (b), and
21 paragraph (2) of subsection (e), of section 521.

22 The Internal Revenue Code of 1986 shall be applied
23 as if such provisions and amendments had never
24 been enacted.

25 (2) SUNSET NOT TO APPLY.—

1 (A) Subsection (a) of section 901 of the
2 Economic Growth and Tax Relief Reconciliation
3 Act of 2001 is amended by striking “this Act”
4 and all that follows and inserting “this Act
5 (other than title V) shall not apply to taxable,
6 plan, or limitation years beginning after Decem-
7 ber 31, 2010.”.

8 (B) Subsection (b) of such section 901 is
9 amended by striking “, estates, gifts, and trans-
10 fers”.

11 (3) REPEAL OF DEADWOOD.—

12 (A) Sections 2011, 2057, and 2604 of the
13 Internal Revenue Code of 1986 are hereby re-
14 pealed.

15 (B) The table of sections for part II of
16 subchapter A of chapter 11 of such Code is
17 amended by striking the item relating to section
18 2011.

19 (C) The table of sections for part IV of
20 subchapter A of chapter 11 of such Code is
21 amended by striking the item relating to section
22 2057.

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

1 **SEC. 2. UNIFIED CREDIT INCREASED BY UNUSED UNIFIED**
 2 **CREDIT OF DECEASED SPOUSE.**

3 (a) IN GENERAL.—Section 2010(c) of the Internal
 4 Revenue Code of 1986, as amended by section 1(b), is
 5 amended by striking paragraph (2) and inserting the fol-
 6 lowing new paragraphs:

7 “(2) APPLICABLE EXCLUSION AMOUNT.—For
 8 purposes of this subsection, the applicable exclusion
 9 amount is the sum of—

10 “(A) the basic exclusion amount, and

11 “(B) in the case of a surviving spouse, the
 12 aggregate deceased spousal unused exclusion
 13 amount.

14 “(3) BASIC EXCLUSION AMOUNT.—

15 “(A) IN GENERAL.—For purposes of this
 16 subsection, the basic exclusion amount is
 17 \$3,500,000.

18 “(B) INFLATION ADJUSTMENT.—In the
 19 case of any decedent dying in a calendar year
 20 after 2010, the dollar amount in subparagraph
 21 (A) shall be increased by an amount equal to—

22 “(i) such dollar amount, multiplied by

23 “(ii) the cost-of-living adjustment de-
 24 termined under section 1(f)(3) for such
 25 calendar year by substituting ‘calendar

1 year 2009’ for ‘calendar year 1992’ in sub-
2 paragraph (B) thereof.

3 If any amount as adjusted under the preceding
4 sentence is not a multiple of \$10,000, such
5 amount shall be rounded to the nearest multiple
6 of \$10,000.

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

11 “(A) the basic exclusion amount, or

12 “(B) the sum of the deceased spousal un-
13 used exclusion amounts computed with respect
14 to each deceased spouse of the surviving spouse.

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

21 “(A) the basic exclusion amount of the de-
22 ceased spouse, over

23 “(B) the amount with respect to which the
24 tentative tax is determined under section

1 2001(b)(1) on the estate of such deceased
2 spouse.

3 “(6) SPECIAL RULES.—

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

16 “(B) EXAMINATION OF PRIOR RETURNS
17 AFTER EXPIRATION OF PERIOD OF LIMITATIONS
18 WITH RESPECT TO DECEASED SPOUSAL UN-
19 USED EXCLUSION AMOUNT.—Notwithstanding
20 any period of limitation in section 6501, after
21 the time has expired under section 6501 within
22 which a tax may be assessed under chapter 11
23 or 12 with respect to a deceased spousal unused
24 exclusion amount, the Secretary may examine a
25 return of the deceased spouse to make deter-

1 minations with respect to such amount for pur-
2 poses of carrying out this subsection.

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

6 (b) CONFORMING AMENDMENTS.—

7 (1) Paragraph (1) of section 2505(a) of the In-
8 ternal Revenue Code of 1986, as amended by section
9 1(a), is amended to read as follows:

10 “(1) the applicable credit amount in effect
11 under section 2010(c) which would apply if the
12 donor died as of the end of the calendar year, re-
13 duced by”.

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

17 (3) Section 6018(a)(1) of such Code is amended
18 by striking “applicable exclusion amount” and in-
19 serting “basic exclusion amount”.

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

1 **SEC. 3. SENSE OF THE SENATE REGARDING REVENUE NEU-**
2 **TRALITY.**

3 It is the sense of the Senate that any reduction in
4 Federal revenues resulting from the provisions of, and
5 amendments made by, this Act should be fully offset.

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