

111TH CONGRESS  
2D SESSION

# S. 3533

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

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IN THE SENATE OF THE UNITED STATES

JUNE 24, 2010

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

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## 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2 hereby repealed: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 6 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 otherwise in ef-  
 10 fect under this subsection with respect to the  
 11 amount in excess of \$500,000,000 shall be increased  
 12 by 10 percent.”.

13 (b) MAINTENANCE OF UNIFIED CREDIT.—The table  
 14 in subsection (c) of section 2010 of the Internal Revenue  
 15 Code of 1986 (relating to applicable credit amount) is  
 16 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 EXCLUSION 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) INFORMATION REPORTING.—

15 (1) IN GENERAL.—Subpart A of part III of  
 16 subchapter A of chapter 61 of the Internal Revenue  
 17 Code of 1986 is amended by inserting after section  
 18 6034A the following new section:

19 **“SEC. 6035. BASIS INFORMATION TO PERSONS ACQUIRING**  
 20 **PROPERTY FROM DECEDENT OR BY GIFT.**

21 **“(a) INFORMATION WITH RESPECT TO PROPERTY**  
 22 **ACQUIRED FROM DECEDENTS.—**

23 **“(1) IN GENERAL.—**The executor of any estate  
 24 **required to file a return under section 6018(a) shall,**

1 on or before the date on which such return was re-  
2 quired to be filed, furnish to the Secretary and to  
3 each person acquiring property from the decedent a  
4 statement identifying—

5 “(A) the value of such property,

6 “(B) in the case of any property to which  
7 the exclusion under section 2031(e) applies or  
8 to which section 1014(e) applies, the adjusted  
9 basis of such property in the hands of the dece-  
10 dent,

11 “(C) in the case of any property which  
12 consists of stock in a DISC or former DISC (as  
13 defined in section 992(a)), the basis of the de-  
14 cedent in such stock reduced by the amount (if  
15 any) which would have been included in gross  
16 income under section 995(c) as a dividend if the  
17 decedent had lived and sold the stock at its fair  
18 market value on the estate tax valuation date  
19 (determined under the rules of section  
20 1014(d)), and

21 “(D) such other information with respect  
22 to such property as the Secretary may pre-  
23 scribe.

1           “(2) VALUE.—For purposes of this subsection,  
2           the value of any property shall be determined under  
3           the rules of section 1014(a).

4           “(b) INFORMATION WITH RESPECT TO PROPERTY  
5 ACQUIRED BY GIFT.—The person who makes a transfer  
6 by gift and who is required to file a return under section  
7 6019(a) shall, on or before the date on which such return  
8 is required to be filed, furnish to the Secretary and to each  
9 person acquiring property through such transfer a state-  
10 ment identifying—

11           “(1) the adjusted basis of such property,

12           “(2) the fair market value of such property at  
13           the time of the transfer,

14           “(3) in the case of a transfer in trust, the  
15           amount of the gain or loss recognized by the grantor  
16           on such transfer,

17           “(4) the amount, if any, of gift tax paid by the  
18           transferor, and

19           “(5) such other information with respect to  
20           such property as the Secretary may prescribe.

21           “(c) REGULATIONS.—The Secretary shall prescribe  
22 such regulations as necessary to carry out this section, in-  
23 cluding regulations relating to—

24           “(1) the application of this section to situations  
25           in which no estate tax return is required to be filed

1 or in which gifts are excluded from gift tax under  
2 section 2503,

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

6 “(3) the timing of the required reporting in the  
7 event of adjustments to the reported value subse-  
8 quent to the filing of an estate or gift tax return.”.

9 (2) PENALTY FOR FAILURE TO FILE.—

10 (A) RETURN.—Subparagraph (B) of sec-  
11 tion 6724(d)(1) of the Internal Revenue Code  
12 of 1986 is amended by striking “or” at the end  
13 of clause (xxiv), by striking “and” at the end  
14 of clause (xxv) and inserting “or”, and by add-  
15 ing at the end the following new clause:

16 “(xxvi) section 6035 (relating to re-  
17 turns relating to basis information to per-  
18 sons acquiring property from decedent),  
19 and”.

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

23 (3) CLERICAL AMENDMENT.—The table of sec-  
24 tions for subpart A of part III of subchapter A of  
25 chapter 61 of the Internal Revenue Code of 1986 is



1 amended by inserting after the item relating to sec-  
2 tion 6034A the following new item:

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

3 (b) CONSISTENT USE OF BASIS.—

4 (1) PROPERTY ACQUIRED FROM A DESCEND-  
5 ANT.—Section 1014 of the Internal Revenue Code of  
6 1986 is amended by adding at the end the following  
7 new subsection:

8 “(f) BASIS MUST BE CONSISTENT WITH INFORMA-  
9 TION REPORTS.—Except as provided by the Secretary in  
10 regulations, in any case in which the executor of the estate  
11 was required to make a return under section 6035, the  
12 basis of the property in the hands of the person acquiring  
13 such property shall be calculated using the information re-  
14 ported to such person under section 6035(a).”.

15 (2) PROPERTY ACQUIRED BY GIFTS AND  
16 TRANSFERS IN TRUST.—Section 1015 of the Inter-  
17 nal Revenue Code of 1986 is amended by adding at  
18 the end the following new subsection:

19 “(f) BASIS MUST BE CONSISTENT WITH INFORMA-  
20 TION REPORTS.—Except as provided by the Secretary in  
21 regulations, in any case in which the transferor was re-  
22 quired to make a return under section 6035, the basis of  
23 the property in the hands of the person acquiring such

1 property shall be calculated using the information reported  
2 to such person under section 6035(b).”.

3 (c) PENALTY FOR INCONSISTENT REPORTING.—

4 (1) IN GENERAL.—Subsection (b) of section  
5 6662 of the Internal Revenue Code of 1986 is  
6 amended by inserting after paragraph (7) the fol-  
7 lowing new paragraph:

8 “(8) Any inconsistent estate or gift basis re-  
9 porting.”.

10 (2) INCONSISTENT BASIS REPORTING.—Section  
11 6662 of such Code is amended by adding at the end  
12 the following new subsection:

13 “(k) INCONSISTENT ESTATE OR GIFT BASIS RE-  
14 PORTING.—For purposes of this section, the term ‘incon-  
15 sistent estate or gift basis reporting’ means the portion  
16 of the understatement which is attributable to the failure  
17 by the taxpayer to use the information reported to such  
18 taxpayer under section 6035 in calculating the basis of  
19 any property acquired from a decedent or by gift or trans-  
20 fer in trust.”.

21 (d) EFFECTIVE DATE.—The amendments made by  
22 this section shall apply to transfers for which returns are  
23 filed after the date of the enactment of this Act.

1 **SEC. 7. VALUATION RULES FOR CERTAIN TRANSFERS OF**  
2 **NONBUSINESS ASSETS; LIMITATION ON MI-**  
3 **NORITY DISCOUNTS.**

4 (a) IN GENERAL.—Section 2031 of the Internal Rev-  
5 enue Code of 1986 (relating to definition of gross estate)  
6 is amended by redesignating subsection (d) as subsection  
7 (f) and by inserting after subsection (c) the following new  
8 subsections:

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

12 “(1) IN GENERAL.—In the case of the transfer  
13 of any interest in an entity other than an interest  
14 which is actively traded (within the meaning of sec-  
15 tion 1092)—

16 “(A) the value of any nonbusiness assets  
17 held by the entity with respect to such interest  
18 shall be determined as if the transferor had  
19 transferred such assets directly to the trans-  
20 feree (and no valuation discount shall be al-  
21 lowed with respect to such nonbusiness assets),  
22 and

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

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

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

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

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

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

23           For purposes of clause (ii), material participa-  
24 tion shall be determined under the rules of sec-  
25 tion 469(h), except that section 469(h)(3) shall

1 be applied without regard to the limitation to  
2 farming activity.

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

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

11 “(A) cash or cash equivalents,

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

15 “(C) evidence of indebtedness, option, for-  
16 ward or futures contract, notional principal con-  
17 tract, or derivative,

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

20 “(E) annuity,

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

1           “(G) asset (other than a patent, trade-  
2           mark, or copyright) which produces royalty in-  
3           come,

4           “(H) commodity,

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

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

9           “(4) LOOK-THRU RULES.—

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

19           “(B) 10-PERCENT INTEREST.—The term  
20           ‘10-percent interest’ means—

21           “(i) in the case of an interest in a cor-  
22           poration, ownership of at least 10 percent  
23           (by vote or value) of the stock in such cor-  
24           poration,

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

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

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

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

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

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

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

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

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

11 “(1) IN GENERAL.—For purposes of”;

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

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

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

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



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

5           “(C) the remainder interest has a value  
6           greater than zero determined as of the time of  
7           the transfer.”.

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

○