114TH CONGRESS 1st Session } HOUSE OF REPRESENTATIVES { REPORT 114–52

DEATH TAX REPEAL ACT OF 2015

APRIL 6, 2015.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RYAN of Wisconsin, from the Committee on Ways and Means, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 1105]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 1105) to amend the Internal Revenue Code of 1986 to repeal the estate and generation-skipping transfer taxes, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Death Tax Repeal Act of 2015".

SEC. 2. REPEAL OF ESTATE AND GENERATION-SKIPPING TRANSFER TAXES.

(a) ESTATE TAX REPEAL.—Subchapter C of chapter 11 of subtitle B of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

"SEC. 2210. TERMINATION.

"(a) IN GENERAL.—Except as provided in subsection (b), this chapter shall not apply to the estates of decedents dying on or after the date of the enactment of the Death Tax Repeal Act of 2015.

"(b) CERTAIN DISTRIBUTIONS FROM QUALIFIED DOMESTIC TRUSTS.—In applying section 2056A with respect to the surviving spouse of a decedent dying before the date of the enactment of the Death Tax Repeal Act of 2015—

"(1) section 2056A(b)(1)(A) shall not apply to distributions made after the 10-year period beginning on such date, and

"(2) section 2056A(b)(1)(B) shall not apply on or after such date.".

(b) GENERATION-SKIPPING TRANSFER TAX REPEAL.—Subchapter G of chapter 13 of subtitle B of such Code is amended by adding at the end the following new section:

"SEC. 2664. TERMINATION.

"This chapter shall not apply to generation-skipping transfers on or after the date of the enactment of the Death Tax Repeal Act of 2015.".

(c) CONFORMING AMENDMENTS.—

(1) The table of sections for subchapter C of chapter 11 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

"Sec. 2210. Termination.".

(2) The table of sections for subchapter G of chapter 13 of such Code is amended by adding at the end the following new item:

"Sec. 2664. Termination.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to the estates of decedents dying, and generation-skipping transfers, on or after the date of the enactment of this Act.

SEC. 3. MODIFICATIONS OF GIFT TAX.

(a) COMPUTATION OF GIFT TAX.—Subsection (a) of section 2502 of the Internal Revenue Code of 1986 is amended to read as follows:

"(a) COMPUTATION OF TAX.—

"(1) IN GENERAL.—The tax imposed by section 2501 for each calendar year shall be an amount equal to the excess of—

"(A) a tentative tax, computed under paragraph (2), on the aggregate sum of the taxable gifts for such calendar year and for each of the preceding calendar periods, over

"(B) a tentative tax, computed under paragraph (2), on the aggregate sum of the taxable gifts for each of the preceding calendar periods.

"(2) RATE SCHEDULE.—

"If the amount with respect to which the tentative tax to be computed is:	**The tentative tax is:**
Not over $10,000	18% of such amount.

Over $10,000 but not over $20,000	$1,800, plus 20% of the excess over $10,000.
Over $20,000 but not over $40,000	$3,800, plus 22% of the excess over $20,000.
Over $40,000 but not over $60,000	$8,200, plus 24% of the excess over $40,000.
Over $60,000 but not over $80,000	$13,000, plus 26% of the excess over $60,000.
Over $80,000 but not over $100,000	$18,200, plus 28% of the excess over $80,000.
Over $100,000 but not over $150,000	$23,800, plus 30% of the excess over $100,000.
Over $150,000 but not over $250,000	$38,800, plus 32% of the excess of $150,000.
Over $250,000 but not over $500,000	$70,800, plus 34% of the excess over $250,000.
Over $500,000	$155,800, plus 35% of the excess of $500,000.".

(b) TREATMENT OF CERTAIN TRANSFERS IN TRUST.—Section 2511 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

"(c) TREATMENT OF CERTAIN TRANSFERS IN TRUST.—Notwithstanding any other provision of this section and except as provided in regulations, a transfer in trust shall be treated as a taxable gift under section 2503, unless the trust is treated as wholly owned by the donor or the donor's spouse under subpart E of part I of subchapter J of chapter 1.".

(c) LIFETIME GIFT EXEMPTION.—

(1) IN GENERAL.—Paragraph (1) of section 2505(a) of the Internal Revenue Code of 1986 is amended to read as follows:

"(1) the amount of the tentative tax which would be determined under the rate schedule set forth in section 2502(a)(2) if the amount with respect to which such tentative tax is to be computed were $5,000,000, reduced by".

(2) INFLATION ADJUSTMENT.—Section 2505 of such Code is amended by adding at the end the following new subsection:

"(d) INFLATION ADJUSTMENT.—

"(1) IN GENERAL.—In the case of any calendar year after 2011, the dollar amount in subsection (a)(1) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 2010' for 'calendar year 1992' in subparagraph (B) thereof.

"(2) ROUNDING.—If any amount as adjusted under paragraph (1) is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.".

(d) CONFORMING AMENDMENTS.—

(1) The heading for section 2505 of such Code is amended by striking "**UNIFIED**".

(2) The item in the table of sections for subchapter A of chapter 12 of such Code relating to section 2505 is amended to read as follows:

"Sec. 2505. Credit against gift tax.".

(3) Section 2801(a)(1) of such Code is amended by striking "section 2001(c) as in effect on the date of such receipt" and inserting "section 2502(a)(2)".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to gifts made on or after the date of the enactment of this Act.

(f) TRANSITION RULE.—

(1) IN GENERAL.—For purposes of applying sections 1015(d), 2502, and 2505 of the Internal Revenue Code of 1986, the calendar year in which this Act is enacted shall be treated as 2 separate calendar years one of which ends on the day before the date of the enactment of this Act and the other of which begins on such date of enactment.

(2) APPLICATION OF SECTION 2504(b).—For purposes of applying section 2504(b) of the Internal Revenue Code of 1986, the calendar year in which this Act is enacted shall be treated as one preceding calendar period.

I. SUMMARY AND BACKGROUND

A. Purpose and Summary

H.R. 1105, reported by the Committee on Ways and Means, provides for the repeal of the estate tax and the generation skipping transfer tax and lowers the highest gift tax rate from 40 percent to 35 percent, effective for decedents dying and gifts after the date of enactment. H.R. 1105 provides a transition rule for assets placed in a qualified domestic trust by a decedent who died before the effective date. Under the transition rule, the estate tax will not be imposed on: (1) distributions before the death of a surviving spouse from the trust more than ten years after the date of enactment; or (2) assets remaining in the qualified domestic trust upon the death of the surviving spouse. H.R. 1105 provides that a transfer in trust shall be treated as a taxable gift, unless the trust is treated as wholly owned by the donor or the donor's spouse for income tax purposes. H.R. 1105 also provides that the year of enactment shall be treated as two separate calendar years, one ending the day before the date of enactment and the other beginning on the date of enactment, for purposes of: (1) computing the gift tax under section 2502 and determining the unified credit for gift tax purposes under section 2505, and (2) determining any increase in basis for gift tax paid.

B. Background and Need for Legislation

While the Committee continues actively to pursue comprehensive tax reform as a critical means of promoting economic growth and job creation, the Committee also believes it is important to provide family businesses and farms with immediate tax relief to help encourage economic growth and job creation. By repealing the estate tax and the generation skipping transfer tax, families no longer will be threatened with the loss of a business due to the untimely death of a family member. Families also will be free to focus their attention on expanding their businesses and creating jobs rather than wasting critical resources on estate planning. A family business or farm facing an estate tax bill could be forced to sell critical assets such as land and inventory, and the business also could face years of lower capital investment, limiting growth opportunities. In addition, the Committee believes that the estate tax imposes a double or, in some cases, triple tax on assets. Repeal of the estate tax eliminates this unfair tax burden.

C. Legislative History

Background

H.R. 1105 was introduced on February 26, 2015, and was referred to the Committee on Ways and Means.

Committee action

The Committee on Ways and Means marked up H.R. 1105, the "Death Tax Repeal Act of 2015," on March 25, 2015, and ordered the bill, as amended, favorably reported (with a quorum being present).

Committee hearings

The need for permanent repeal of the estate tax was discussed at a Select Revenue Measures Subcommittee Hearing on the Burden of the Estate Tax on Family Businesses and Farms on March 18, 2015.

II. EXPLANATION OF THE BILL

A. REPEAL OF THE ESTATE AND GENERATION-SKIPPING TRANSFER TAXES AND MODIFICATIONS TO THE GIFT TAX (SECS. 2 AND 3 OF THE BILL, SECS. 2502, 2505, AND 2511 OF THE CODE, AND NEW SECS. 2210 AND 2664 OF THE CODE)

PRESENT LAW

In General

A gift tax is imposed on certain lifetime transfers, and an estate tax is imposed on certain transfers at death. A generation-skipping transfer tax generally is imposed on transfers, either directly or in trust or similar arrangement, to a "skip person" (*i.e.*, a beneficiary in a generation more than one generation younger than that of the transferor). Transfers subject to the generation-skipping transfer tax include direct skips, taxable terminations, and taxable distributions.

Income tax rules determine the recipient's tax basis in property acquired from a decedent or by gift. Gifts and bequests generally are excluded from the recipient's gross income.[1]

Common Features of the Estate, Gift and Generation-Skipping Transfer Taxes

Unified credit (exemption) and tax rates

Unified credit.—A unified credit is available with respect to taxable transfers by gift and at death.[2] The unified credit offsets tax, computed using the applicable estate and gift tax rates, on a specified amount of transfers, referred to as the applicable exclusion amount, or exemption amount. The exemption amount was set at $5 million for 2011 and is indexed for inflation for later years.[3] For 2015, the inflation-indexed exemption amount is $5.43 million.[4] Exemption used during life to offset taxable gifts reduces the amount of exemption that remains at death to offset the value of a decedent's estate. An election is available under which exemption that is not used by a decedent may be used by the decedent's surviving spouse (exemption portability).

Common tax rate table.—A common tax-rate table with a top marginal tax rate of 40 percent is used to compute gift tax and estate tax. The 40-percent rate applies to transfers in excess of $1 million (to the extent not exempt). Because the exemption amount currently shields the first $5.43 million in gifts and bequests from

[1] Sec. 102.
[2] Sec. 2010.
[3] For 2011 and later years, the gift and estate taxes were reunified, meaning that the gift tax exemption amount was increased to equal the estate tax exemption amount.
[4] For 2015, the $5.43 exemption amount results in a unified credit of $2,117,800, after applying the applicable rates set forth in section 2001(c).

tax, transfers in excess of the exemption amount generally are subject to tax at the highest marginal 40-percent rate.

Generation-skipping transfer tax exemption and rate.—The generation-skipping transfer tax is a separate tax that can apply in addition to either the gift tax or the estate tax. The tax rate and exemption amount for generation-skipping transfer tax purposes, however, are set by reference to the estate tax rules. Generation-skipping transfer tax is imposed using a flat rate equal to the highest estate tax rate (40 percent). Tax is imposed on cumulative generation-skipping transfers in excess of the generation-skipping transfer tax exemption amount in effect for the year of the transfer. The generation-skipping transfer tax exemption for a given year is equal to the estate tax exemption amount in effect for that year (currently $5.43 million).

Transfers between spouses.—A 100-percent marital deduction generally is permitted for the value of property transferred between spouses.[5] In addition, transfers of "qualified terminable interest property" also are eligible for the marital deduction. Qualified terminable interest property is property: (1) that passes from the decedent, (2) in which the surviving spouse has a "qualifying income interest for life," and (3) to which an election under these rules applies. A qualifying income interest for life exists if: (1) the surviving spouse is entitled to all the income from the property (payable annually or at more frequent intervals) or has the right to use the property during the spouse's life, and (2) no person has the power to appoint any part of the property to any person other than the surviving spouse.

A marital deduction generally is denied for property passing to a surviving spouse who is not a citizen of the United States. A marital deduction is permitted, however, for property passing to a qualified domestic trust of which the noncitizen surviving spouse is a beneficiary. A qualified domestic trust is a trust that has as its trustee at least one U.S. citizen or U.S. corporation. No corpus may be distributed from a qualified domestic trust unless the U.S. trustee has the right to withhold any estate tax imposed on the distribution.

Tax is imposed on (1) any distribution from a qualified domestic trust before the date of the death of the noncitizen surviving spouse and (2) the value of the property remaining in a qualified domestic trust on the date of death of the noncitizen surviving spouse. The tax is computed as an additional estate tax on the estate of the first spouse to die.

Transfers to charity.—Contributions to section 501(c)(3) charitable organizations and certain other organizations may be deducted from the value of a gift or from the value of the assets in an estate for Federal gift or estate tax purposes.[6] The effect of the deduction generally is to remove the full fair market value of assets transferred to charity from the gift or estate tax base; unlike the income tax charitable deduction, there are no percentage limits on the deductible amount. For estate tax purposes, the charitable deduction is limited to the value of the transferred property that is required to be included in the gross estate.[7] A charitable contribu-

[5] Secs. 2056 and 2523.
[6] Secs. 2055 and 2522.
[7] Sec. 2055(d).

tion of a partial interest in property, such as a remainder or future interest, generally is not deductible for gift or estate tax purposes.[8]

The Estate Tax

Overview

The Code imposes a tax on the transfer of the taxable estate of a decedent who is a citizen or resident of the United States.[9] The taxable estate is determined by deducting from the value of the decedent's gross estate any deductions provided for in the Code. After applying tax rates to determine a tentative amount of estate tax, certain credits are subtracted to determine estate tax liability.[10]

Because the estate tax shares a common unified credit (exemption) and tax rate table with the gift tax, the exemption amounts and tax rates are described together above, along with certain other common features of these taxes.

Gross estate

A decedent's gross estate includes, to the extent provided for in other sections of the Code, the date-of-death value of all of a decedent's property, real or personal, tangible or intangible, wherever situated.[11] In general, the value of property for this purpose is the fair market value of the property as of the date of the decedent's death, although an executor may elect to value certain property as of the date that is six months after the decedent's death (the alternate valuation date).[12]

The gross estate includes not only property directly owned by the decedent, but also other property in which the decedent had a beneficial interest at the time of his or her death.[13] The gross estate also includes certain transfers made by the decedent prior to his or her death, including: (1) certain gifts made within three years prior to the decedent's death;[14] (2) certain transfers of property in which the decedent retained a life estate;[15] (3) certain transfers taking effect at death;[16] and (4) revocable transfers.[17] In addition, the gross estate also includes property with respect to which the decedent had, at the time of death, a general power of appointment (generally, the right to determine who will have beneficial owner-

[8] Secs. 2055(e)(2) and 2522(c)(2).

[9] Sec. 2001(a).

[10] More mechanically, the taxable estate is combined with the value of adjusted taxable gifts made during the decedent's life (generally, post–1976 gifts), before applying tax rates to determine a tentative total amount of tax. The portion of the tentative tax attributable to lifetime gifts is then subtracted from the total tentative tax to determine the gross estate tax, *i.e.*, the amount of estate tax before considering available credits. Credits are then subtracted to determine the estate tax liability.

This method of computation was designed to ensure that a taxpayer only gets one run up through the rate brackets for all lifetime gifts and transfers at death, at a time when the thresholds for applying the higher marginal rates exceeded the exemption amount. However, the higher ($5.43 million) present-law exemption amount effectively renders the lower rate brackets irrelevant, because the top marginal rate bracket applies to all transfers in excess of $1 million. In other words, all transfers that are not exempt by reason of the $5.43 million exemption amount are taxed at the highest marginal rate of 40 percent.

[11] Sec. 2031(a).

[12] Sec. 2032.

[13] Sec. 2033.

[14] Sec. 2035.

[15] Sec. 2036.

[16] Sec. 2037.

[17] Sec. 2038.

ship).[18] The value of a life insurance policy on the decedent's life is included in the gross estate if the proceeds are payable to the decedent's estate or the decedent had incidents of ownership with respect to the policy at the time of his or her death. [19]

Deductions from the gross estate

A decedent's taxable estate is determined by subtracting from the value of the gross estate any deductions provided for in the Code.

Marital and charitable transfers.—As described above, transfers to a surviving spouse or to charity generally are deductible for estate tax purposes. The effect of the marital and charitable deductions generally is to remove assets transferred to a surviving spouse or to charity from the estate tax base.

State death taxes.—An estate tax deduction is permitted for death taxes (*e.g.*, any estate, inheritance, legacy, or succession taxes) actually paid to any State or the District of Columbia, in respect of property included in the gross estate of the decedent.[20] Such State taxes must have been paid and claimed before the later of: (1) four years after the filing of the estate tax return; or (2) (a) 60 days after a decision of the U.S. Tax Court determining the estate tax liability becomes final, (b) the expiration of the period of extension to pay estate taxes over time under section 6166, or (c) the expiration of the period of limitations in which to file a claim for refund or 60 days after a decision of a court in which such refund suit has become final.

Other deductions.—A deduction is available for funeral expenses, estate administration expenses, and claims against the estate, including certain taxes.[21] A deduction also is available for uninsured casualty and theft losses incurred during the settlement of the estate.[22]

Credits against tax

After accounting for allowable deductions, a gross amount of estate tax is computed. Estate tax liability is then determined by subtracting allowable credits from the gross estate tax.

Unified credit.—The most significant credit allowed for estate tax purposes is the unified credit, which is discussed in greater detail above.[23] For 2015, the value of the unified credit is $2,117,800, which has the effect of exempting $5.43 million in transfers from tax. The unified credit available at death is reduced by the amount of unified credit used to offset gift tax on gifts made during the decedent's life.

Other credits.—Estate tax credits also are allowed for: (1) gift tax paid on certain pre–1977 gifts (before the estate and gift tax computations were integrated);[24] (2) estate tax paid on certain prior transfers (to limit the estate tax burden when estate tax is imposed on transfers of the same property in two estates by reason of deaths in rapid succession);[25] and (3) certain foreign death taxes

[18] Sec. 2041.
[19] Sec. 2042.
[20] Sec. 2058.
[21] Sec. 2053.
[22] Sec. 2054.
[23] Sec. 2010.
[24] Sec. 2012.
[25] Sec. 2013.

paid (generally, where the property is situated in a foreign country but included in the decedent's U.S. gross estate).[26]

Provisions affecting small and family-owned businesses and farms

Special-use valuation.—An executor can elect to value for estate tax purposes certain "qualified real property" used in farming or another qualifying closely-held trade or business at its current-use value, rather than its fair market value.[27] The maximum reduction in value for such real property is $750,000 (adjusted for inflation occurring after 1997; the inflation-adjusted amount for 2015 is $1,100,000). In general, real property generally qualifies for special-use valuation only if (1) at least 50 percent of the adjusted value of the decedent's gross estate (including both real and personal property) consists of a farm or closely-held business property in the decedent's estate and (2) at least 25 percent of the adjusted value of the gross estate consists of farm or closely held business real property. In addition, the property must be used in a qualified use (*e.g.*, farming) by the decedent or a member of the decedent's family for five of the eight years before the decedent's death.

If, after a special-use valuation election is made, the heir who acquired the real property ceases to use it in its qualified use within 10 years of the decedent's death, an additional estate tax is imposed to recapture the entire estate-tax benefit of the special-use valuation.[28]

Installment payment of estate tax for closely held businesses.—Under present law, the estate tax generally is due within nine months of a decedent's death. However, an executor generally may elect to pay estate tax attributable to an interest in a closely held business in two or more installments (but no more than 10).[29] An estate is eligible for payment of estate tax in installments if the value of the decedent's interest in a closely held business exceeds 35 percent of the decedent's adjusted gross estate (*i.e.*, the gross estate less certain deductions). If the election is made, the estate may defer payment of principal and pay only interest for the first five

[26] Sec. 2014. In certain cases, an election may be made to deduct foreign death taxes. See section 2053(d).

[27] Sec. 2032A.

[28] Prior to 2004, an estate also was permitted to deduct the adjusted value of a qualified family-owned business interest of the decedent, up to $675,000. Sec. 2057. A qualified family-owned business interest generally was defined as any interest in a trade or business (regardless of the form in which it is held) with a principal place of business in the United States if the decedent's family owns at least 50 percent of the trade or business, two families own 70 percent, or three families own 90 percent, as long as the decedent's family owns at least 30 percent of the trade or business. To qualify for the exclusion, the decedent (or a member of the decedent's family) must have owned and materially participated in the trade or business for at least five of the eight years preceding the decedent's date of death. In addition, at least one qualified heir (or member of the qualified heir's family) was required to have materially participated in the trade or business for at least 10 years following the decedent's death. The qualified family-owned business rules provided a graduated recapture based on the number of years after the decedent's death within which a disqualifying event occurred.

The qualified family-owned business deduction and the unified credit effective exemption amount were coordinated. If the maximum deduction amount of $675,000 is elected, then the unified credit effective exemption amount is $625,000, for a total of $1.3 million. If the qualified family-owned business deduction is less than $675,000, then the unified credit effective exemption amount is equal to $625,000, increased by the difference between $675,000 and the amount of the qualified family-owned business deduction. However, the unified credit effective exemption amount cannot be increased above such amount in effect for the taxable year. Because of the coordination between the qualified family-owned business deduction and the unified credit effective exemption amount, the qualified family-owned business deduction did not provide a benefit in any year in which the applicable exclusion amount exceeded $1.3 million.

[29] Sec. 6166.

years, followed by up to 10 annual installments of principal and interest. This provision effectively extends the time for paying estate tax by 14 years from the original due date of the estate tax. A special two-percent interest rate applies to the amount of deferred estate tax attributable to the first $1 million (adjusted annually for inflation occurring after 1998; the inflation-adjusted amount for 2015 is $1,470,000) in taxable value of a closely held business. The interest rate applicable to the amount of estate tax attributable to the taxable value of the closely held business in excess of $1 million (adjusted for inflation) is equal to 45 percent of the rate applicable to underpayments of tax under section 6621 of the Code (*i.e.*, 45 percent of the Federal short-term rate plus three percentage points).[30] Interest paid on deferred estate taxes is not deductible for estate or income tax purposes.

The Gift Tax

Overview

The Code imposes a tax for each calendar year on the transfer of property by gift during such year by any individual, whether a resident or nonresident of the United States.[31] The amount of taxable gifts for a calendar year is determined by subtracting from the total amount of gifts made during the year: (1) the gift tax annual exclusion (described below); and (2) allowable deductions.

Gift tax for the current taxable year is determined by: (1) computing a tentative tax on the combined amount of all taxable gifts for the current and all prior calendar years using the common gift tax and estate tax rate table; (2) computing a tentative tax only on all prior-year gifts; (3) subtracting the tentative tax on prior-year gifts from the tentative tax computed for all years to arrive at the portion of the total tentative tax attributable to current-year gifts; and, finally, (4) subtracting the amount of unified credit not consumed by prior-year gifts.

Because the gift tax shares a common unified credit (exemption) and tax rate table with the estate tax, the exemption amounts and tax rates are described together above, along with certain other common features of these taxes.

Transfers by gift

The gift tax applies to a transfer by gift regardless of whether: (1) the transfer is made outright or in trust; (2) the gift is direct or indirect; or (3) the property is real or personal, tangible or intangible.[32] For gift tax purposes, the value of a gift of property is the fair market value of the property at the time of the gift.[33] Where property is transferred for less than full consideration, the amount by which the value of the property exceeds the value of the consideration is considered a gift and is included in computing the total amount of a taxpayer's gifts for a calendar year.[34]

For a gift to occur, a donor generally must relinquish dominion and control over donated property. For example, if a taxpayer transfers assets to a trust established for the benefit of his or her

[30] The interest rate on this portion adjusts with the Federal short-term rate.
[31] Sec. 2501(a).
[32] Sec. 2511(a).
[33] Sec. 2512(a).
[34] Sec. 2512(b).

children, but retains the right to revoke the trust, the taxpayer may not have made a completed gift, because the taxpayer has retained dominion and control over the transferred assets. A completed gift made in trust, on the other hand, often is treated as a gift to the trust beneficiaries.

By reason of statute, certain transfers are not treated as transfers by gift for gift tax purposes. These include, for example, certain transfers for educational and medical purposes [35] and transfers to section 527 political organizations.[36]

Taxable gifts

As stated above, the amount of a taxpayer's taxable gifts for the year is determined by subtracting from the total amount of the taxpayer's gifts for the year the gift tax annual exclusion and any available deductions.

Gift tax annual exclusion.—Under present law, donors of lifetime gifts are provided an annual exclusion of $14,000 per donee in 2015 (indexed for inflation from the 1997 annual exclusion amount of $10,000) for gifts of present interests in property during the taxable year.[37] If the non-donor spouse consents to split the gift with the donor spouse, then the annual exclusion is $28,000 per donee in 2015. In general, unlimited transfers between spouses are permitted without imposition of a gift tax. Special rules apply to the contributions to a qualified tuition program ("529 Plan") including an election to treat a contribution that exceeds the annual exclusion as a contribution made ratably over a five-year period beginning with the year of the contribution.[38]

Marital and charitable deductions.—As described above, transfers to a surviving spouse or to charity generally are deductible for gift tax purposes. The effect of the marital and charitable deductions generally is to remove assets transferred to a surviving spouse or to charity from the gift tax base.

The Generation-Skipping Transfer Tax

A generation-skipping transfer tax generally is imposed (in addition to the gift tax or the estate tax) on transfers, either directly or in trust or similar arrangement, to a "skip person" (*i.e.*, a beneficiary in a generation more than one generation below that of the transferor). Transfers subject to the generation-skipping transfer tax include direct skips, taxable terminations, and taxable distributions.

Exemption and tax rate

An exemption generally equal to the estate tax exemption amount ($5.43 million for 2015) is provided for each person making generation-skipping transfers. The exemption may be allocated by a transferor (or his or her executor) to transferred property, and in some cases is automatically allocated. The allocation of generation-skipping transfer tax exemption effectively reduces the tax rate on a generation-skipping transfer.

[35] Sec. 2503(e).
[36] Sec. 2501(a)(4).
[37] Sec. 2503(b).
[38] Sec. 529(c)(2).

The tax rate on generation-skipping transfers is a flat rate of tax equal to the maximum estate and gift tax rate (40 percent) multiplied by the "inclusion ratio." The inclusion ratio with respect to any property transferred indicates the amount of "generation-skipping transfer tax exemption" allocated to a trust (or to property transferred in a direct skip) relative to the total value of property transferred.[39] If, for example, a taxpayer transfers $5 million in property to a trust and allocates $5 million of exemption to the transfer, the inclusion ratio is zero, and the applicable tax rate on any subsequent generation-skipping transfers from the trust is zero percent (40 percent multiplied by the inclusion ratio of zero). If, however, the taxpayer allocated only $2.5 million of exemption to the transfer, the inclusion ratio is 0.5, and the applicable tax rate on any subsequent generation-skipping transfers from the trust is 20 percent (40 percent multiplied by the inclusion ratio of 0.5). If the taxpayer allocates no exemption to the transfer, the inclusion ratio is one, and the applicable tax rate on any subsequent generation-skipping transfers from the trust is 40 percent (40 percent multiplied by the inclusion ratio of one).

Generation-skipping transfers

Generation-skipping transfer tax generally is imposed at the time of a generation-skipping transfer—a direct skip, a taxable termination, or a taxable distribution.

A direct skip is any transfer subject to estate or gift tax of an interest in property to a skip person. A skip person may be a natural person or certain trusts. All persons assigned to the second or more remote generation below the transferor are skip persons (*e.g.*, grandchildren and great-grandchildren). Trusts are skip persons if (1) all interests in the trust are held by skip persons, or (2) no person holds an interest in the trust and at no time after the transfer may a distribution (including distributions and terminations) be made to a non-skip person.

A taxable termination is a termination (by death, lapse of time, release of power, or otherwise) of an interest in property held in trust unless, immediately after such termination, a non-skip person has an interest in the property, or unless at no time after the termination may a distribution (including a distribution upon termination) be made from the trust to a skip person.

A taxable distribution is a distribution from a trust to a skip person (other than a taxable termination or direct skip). If a transferor allocates generation-skipping transfer tax exemption to a trust prior to the taxable distribution, generation-skipping transfer tax may be avoided.

Income Tax Basis in Property Received

In general

Gain or loss, if any, on the disposition of property is measured by the taxpayer's amount realized (*i.e.*, gross proceeds received) on the disposition, less the taxpayer's basis in such property. Basis generally represents a taxpayer's investment in property with cer-

[39] The inclusion ratio is one minus the applicable fraction. The applicable fraction is the amount of exemption allocated to a trust (or to a direct skip) divided by the value of assets transferred.

tain adjustments required after acquisition. For example, basis is increased by the cost of capital improvements made to the property and decreased by depreciation deductions taken with respect to the property.

A gift or bequest of appreciated (or loss) property is not an income tax realization event for the transferor. The Code provides special rules for determining a recipient's basis in assets received by lifetime gift or from a decedent.

Basis in property received by lifetime gift

Under present law, property received from a donor of a lifetime gift generally takes a carryover basis. "Carryover basis" means that the basis in the hands of the donee is the same as it was in the hands of the donor. The basis of property transferred by lifetime gift also is increased, but not above fair market value, by any gift tax paid by the donor. The basis of a lifetime gift, however, generally cannot exceed the property's fair market value on the date of the gift. If a donor's basis in property is greater than the fair market value of the property on the date of the gift, then, for purposes of determining loss on a subsequent sale of the property, the donee's basis is the property's fair market value on the date of the gift.

Basis in property acquired from a decedent

Property acquired from a decedent's estate generally takes a stepped-up basis. "Stepped-up basis" means that the basis of property acquired from a decedent's estate generally is the fair market value on the date of the decedent's death (or, if the alternate valuation date is elected, the earlier of six months after the decedent's death or the date the property is sold or distributed by the estate). Providing a fair market value basis eliminates the recognition of income on any appreciation of the property that occurred prior to the decedent's death and eliminates the tax benefit from any unrealized loss.

In community property states, a surviving spouse's one-half share of community property held by the decedent and the surviving spouse (under the community property laws of any State, U.S. possession, or foreign country) generally is treated as having passed from the decedent and, thus, is eligible for stepped-up basis. Thus, both the decedent's one-half share and the surviving spouse's one-half share are stepped up to fair market value. This rule applies if at least one-half of the whole of the community interest is includible in the decedent's gross estate.

Stepped-up basis treatment generally is denied to certain interests in foreign entities. Stock in a passive foreign investment company (including those for which a mark-to-market election has been made) generally takes a carryover basis, except that stock of a passive foreign investment company for which a decedent shareholder had made a qualified electing fund election is allowed a stepped-up basis.[40] Stock owned by a decedent in a domestic international sales corporation (or former domestic international sales corporation) takes a stepped-up basis reduced by the amount (if any) which would have been included in gross income under section

[40] See secs. 1291(e) and 1296(i).

995(c) as a dividend if the decedent had lived and sold the stock at its fair market value on the estate tax valuation date (*i.e.*, generally the date of the decedent's death unless an alternate valuation date is elected).

REASONS FOR CHANGE

The Committee believes the Federal estate and generation-skipping transfer taxes harm taxpayers and the economy and therefore should be repealed. A tax on capital, such as the estate tax, motivates wealth holders to reduce savings and increase spending during life, rather than passing it to the next generation, ultimately increasing the consumption gap between the wealthy and poor. A tax on capital also causes investors to provide less capital to workers, thereby reducing wages in the long run.

The Committee is particularly concerned about the effect of the estate tax on the owners of farms and family businesses, which create jobs and support our economy. The estate tax hits such entrepreneurs especially hard, forcing families of deceased owners to make the difficult decision to sell all or part of the farm or business to satisfy the estate tax liability.

EXPLANATION OF PROVISION

The provision repeals the estate tax and the generation-skipping transfer tax for estates of decedents dying and generation-skipping transfers made after the date of enactment. The provision includes a transition rule for assets placed in a qualified domestic trust by a decedent who died before the effective date of the proposal. Specifically, estate tax will not be imposed on: (1) distributions before the death of a surviving spouse from the trust more than 10 years after the date of enactment; or (2) assets remaining in the qualified domestic trust upon the death of the surviving spouse.

The provision retains the gift tax with a top marginal gift tax rate of 35 percent. The lifetime gift tax exemption amount under the proposal is the same as the present-law amount, *i.e.*, $5 million adjusted for inflation for years after 2011, and the gift tax annual exclusion ($14,000 for 2015) will continue to apply. The provision provides that a transfer in trust shall be treated as a taxable gift, unless the trust is treated as wholly owned by the donor or the donor's spouse for income tax purposes (*i.e.*, is a grantor trust).

The provision does not amend the rules for determining the income tax basis of assets acquired by gift or from a decedent. As a result, property received from a donor of a lifetime gift generally will continue to take a carryover basis, and property acquired from a decedent's estate generally will continue to take a stepped-up basis.

EFFECTIVE DATE

The provision is effective for decedents dying and gifts made on or after the date of enactment. The year of enactment shall be treated as two separate calendar years, one ending the day before the date of enactment and the other beginning on the date of enactment, for purposes of: (1) computing the gift tax under section 2502 and determining the unified credit for gift tax purposes under section 2505, and (2) determining any increase in basis under section 1015(d) of property acquired by gift.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of H.R. 1105, the "Death Tax Repeal Act of 2015," on March 25, 2015.

The bill, H.R. 1105, as amended, was ordered favorably reported to the House of Representatives by a roll call vote of 22 yeas to 10 nays (with a quorum being present).

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Ryan	✓			Mr. Levin		✓	
Mr. Johnson	✓			Mr. Rangel			
Mr. Brady	✓			Mr. McDermott		✓	
Mr. Nunes	✓			Mr. Lewis		✓	
Mr. Tiberi	✓			Mr. Neal		✓	
Mr. Reichert	✓			Mr. Becerra			
Mr. Boustany	✓			Mr. Doggett			
Mr. Roskam	✓			Mr. Thompson		✓	
Mr. Price				Mr. Larson		✓	
Mr. Buchanan	✓			Mr. Blumenauer			
Mr. Smith (NE)	✓			Mr. Kind			
Ms. Jenkins	✓			Mr. Pascrell		✓	
Mr. Paulsen	✓			Mr. Crowley		✓	
Mr. Marchant	✓			Mr. Davis		✓	
Ms. Black	✓			Ms. Sanchez		✓	
Mr. Reed	✓						
Mr. Young	✓						
Mr. Kelly	✓						
Mr. Renacci	✓						
Mr. Meehan	✓						
Ms. Noem	✓						
Mr. Holding	✓						
Mr. Smith (MO)	✓						

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, H.R. 1105, as reported.

The bill, as reported, is estimated to have the following effect on Federal budget receipts for fiscal years 2015–2025:

FISCAL YEARS

[Millions of Dollars]

2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2015–20	2015–25
—	−14,616	−23,880	−25,157	−26,070	−27,059	−28,104	−29,323	−30,450	−31,529	−32,776	−116,782	−268,965

NOTE: Details do not add to totals due to rounding.

Pursuant to clause 8 of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: the gross budgetary effect (before incorporating macroeconomic effects) in any fiscal year is less than 0.25 percent of the current projected gross domestic product of the United States for that fiscal year; therefore, the bill is not "major legislation" for purposes of requiring that the estimate include the budgetary effects of changes in economic output, employment, capital stock and other macroeconomic variables.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES BUDGET AUTHORITY

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that there are no new or increased tax expenditures.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 2, 2015.

Hon. PAUL RYAN,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1105, the Death Tax Repeal Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Logan Timmerhoff.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 1105—Death Tax Repeal Act of 2015

H.R. 1105 would amend the Internal Revenue Code to repeal the estate tax for estates of individuals dying on or after the date of enactment. The bill would also repeal the generation-skipping transfer tax for such transfers made on or after the date of enactment. In addition, H.R. 1105 would lower the top marginal gift tax rate from 40 percent to 35 percent.

The staff of the Joint Committee on Taxation (JCT) estimates that enacting H.R. 1105 would reduce revenues, thus increasing federal deficits, by about $269 billion over the 2015–2025 period.

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending and revenues. Enacting H.R. 1105 would result in revenue losses in each year beginning in 2016. The estimated increases in the deficit are shown in the following table.

JCT has determined that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Logan Timmerhoff. The estimate was approved by David Weiner, Assistant Director for Tax Analysis.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 1105, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON WAYS AND MEANS ON MARCH 25, 2015

	By fiscal year, in millions of dollars—												
	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2015–2020	2015–2025
	NET INCREASE IN THE DEFICIT												
Statutory Pay-As-You-Go Impact	0	14,616	23,880	25,157	26,070	27,059	28,104	29,323	30,450	31,529	32,776	116,782	268,965

Source: Staff of the Joint Committee on Taxation.
Note: Components may not sum to totals because of rounding.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was as a result of the Committee's review of the provisions of H.R. 1105 that the Committee concluded that it is appropriate to report the bill, as amended, favorably to the House of Representatives with the recommendation that the bill do pass.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. Applicability of House Rule XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the bill, and states that the bill does not involve any Federal income tax rate increases within the meaning of the rule.

E. Tax Complexity Analysis

Section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code and that have "widespread applicability" to individuals or small businesses, within the meaning of the rule.

F. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

G. Duplication of Federal Programs

In compliance with Sec. 3(g)(2) of H. Res. 5 (114th Congress), the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program, (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169).

H. Disclosure of Directed Rule Makings

In compliance with Sec. 3(i) of H. Res. 5 (114th Congress), the following statement is made concerning directed rule makings: The Committee estimates that the bill requires no directed rule makings within the meaning of such section.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

A. Text of Existing Law Amended or Repealed by the Bill, as Reported

In compliance with clause 3(e)(1)(A) of rule XIII of the Rules of the House of Representatives, the text of each section proposed to be amended or repealed by the bill, as reported, is shown below:

INTERNAL REVENUE CODE OF 1986

* * * * * * *

Subtitle B—Estate and Gift Taxes

* * * * * * *

CHAPTER 12—GIFT TAX

* * * * * * *

Subchapter A—Determination of Tax Liability

*   *   *   *   *   *   *

Sec. 2505. Unified credit against gift tax.

*   *   *   *   *   *   *

SEC. 2502. RATE OF TAX.

(a) COMPUTATION OF TAX.—The tax imposed by section 2501 for each calendar year shall be an amount equal to the excess of—

(1) a tentative tax, computed under section 2001(c), on the aggregate sum of the taxable gifts for such calendar year and for each of the preceding calendar periods, over

(2) a tentative tax, computed under such section, on the aggregate sum of the taxable gifts for each of the preceding calendar periods.

(b) PRECEDING CALENDAR PERIOD.—Whenever used in this title in connection with the gift tax imposed by this chapter, the term "preceding calendar period" means—

(1) calendar years 1932 and 1970 and all calendar years intervening between calendar year 1932 and calendar year 1970,

(2) the first calendar quarter of calendar year 1971 and all calendar quarters intervening between such calendar quarter and the first calendar quarter of calendar year 1982, and

(3) all calendar years after 1981 and before the calendar year for which the tax is being computed.

For purposes of paragraph (1), the term "calendar year 1932" includes only that portion of such year after June 6, 1932.

(c) TAX TO BE PAID BY DONOR.—The tax imposed by section 2501 shall be paid by the donor.

*   *   *   *   *   *   *

SEC. 2505. UNIFIED CREDIT AGAINST GIFT TAX.

(a) GENERAL RULE.—In the case of a citizen or resident of the United States, there shall be allowed as a credit against the tax imposed by section 2501 for each calendar year an amount equal to—

(1) the applicable credit amount in effect under section 2010(c) which would apply if the donor died as of the end of the calendar year, reduced by

(2) the sum of the amounts allowable as a credit to the individual under this section for all preceding calendar periods.

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

(b) ADJUSTMENT TO CREDIT FOR CERTAIN GIFTS MADE BEFORE 1977.—The amount allowable under subsection (a) shall be reduced by an amount equal to 20 percent of the aggregate amount allowed as a specific exemption under section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) with respect to gifts made by the individual after September 8, 1976.

(c) LIMITATION BASED ON AMOUNT OF TAX.—The amount of the credit allowed under subsection (a) for any calendar year shall not exceed the amount of the tax imposed by section 2501 for such calendar year.

* * * * * * *

Subchapter B—Transfers

SEC. 2511. TRANSFERS IN GENERAL.

(a) SCOPE.—Subject to the limitations contained in this chapter, the tax imposed by section 2501 shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible; but in the case of a nonresident not a citizen of the United States, shall apply to a transfer only if the property is situated within the United States.

(b) INTANGIBLE PROPERTY.—For purposes of this chapter, in the case of a nonresident not a citizen of the United States who is excepted from the application of section 2501(a)(2)—

(1) shares of stock issued by a domestic corporation, and

(2) debt obligations of—

(A) a United States person, or

(B) the United States, a State or any political subdivision thereof, or the District of Columbia,

which are owned and held by such nonresident shall be deemed to be property situated within the United States.

* * * * * * *

CHAPTER 15—GIFTS AND BEQUESTS FROM EXPATRIATES

SEC. 2801. IMPOSITION OF TAX.

(a) IN GENERAL.—If, during any calendar year, any United States citizen or resident receives any covered gift or bequest, there is hereby imposed a tax equal to the product of—

(1) the highest rate of tax specified in the table contained in section 2001(c) as in effect on the date of such receipt, and

(2) the value of such covered gift or bequest.

(b) TAX TO BE PAID BY RECIPIENT.—The tax imposed by subsection (a) on any covered gift or bequest shall be paid by the person receiving such gift or bequest.

(c) EXCEPTION FOR CERTAIN GIFTS.—Subsection (a) shall apply only to the extent that the value of covered gifts and bequests received by any person during the calendar year exceeds the dollar amount in effect under section 2503(b) for such calendar year.

(d) TAX REDUCED BY FOREIGN GIFT OR ESTATE TAX.—The tax imposed by subsection (a) on any covered gift or bequest shall be reduced by the amount of any gift or estate tax paid to a foreign country with respect to such covered gift or bequest.

(e) COVERED GIFT OR BEQUEST.—

(1) IN GENERAL.—For purposes of this chapter, the term "covered gift or bequest" means—

(A) any property acquired by gift directly or indirectly from an individual who, at the time of such acquisition, is a covered expatriate, and

(B) any property acquired directly or indirectly by reason of the death of an individual who, immediately before such death, was a covered expatriate.

(2) EXCEPTIONS FOR TRANSFERS OTHERWISE SUBJECT TO ESTATE OR GIFT TAX.—Such term shall not include—

(A) any property shown on a timely filed return of tax imposed by chapter 12 which is a taxable gift by the covered expatriate, and

(B) any property included in the gross estate of the covered expatriate for purposes of chapter 11 and shown on a timely filed return of tax imposed by chapter 11 of the estate of the covered expatriate.

(3) EXCEPTIONS FOR TRANSFERS TO SPOUSE OR CHARITY.—Such term shall not include any property with respect to which a deduction would be allowed under section 2055, 2056, 2522, or 2523, whichever is appropriate, if the decedent or donor were a United States person.

(4) TRANSFERS IN TRUST.—

(A) DOMESTIC TRUSTS.—In the case of a covered gift or bequest made to a domestic trust—

(i) subsection (a) shall apply in the same manner as if such trust were a United States citizen, and

(ii) the tax imposed by subsection (a) on such gift or bequest shall be paid by such trust.

(B) FOREIGN TRUSTS.—

(i) IN GENERAL.—In the case of a covered gift or bequest made to a foreign trust, subsection (a) shall apply to any distribution attributable to such gift or bequest from such trust (whether from income or corpus) to a United States citizen or resident in the same manner as if such distribution were a covered gift or bequest.

(ii) DEDUCTION FOR TAX PAID BY RECIPIENT.—There shall be allowed as a deduction under section 164 the amount of tax imposed by this section which is paid or accrued by a United States citizen or resident by reason of a distribution from a foreign trust, but only to the extent such tax is imposed on the portion of such distribution which is included in the gross income of such citizen or resident.

(iii) ELECTION TO BE TREATED AS DOMESTIC TRUST.—Solely for purposes of this section, a foreign trust may elect to be treated as a domestic trust. Such an election may be revoked with the consent of the Secretary.

(f) COVERED EXPATRIATE.—For purposes of this section, the term "covered expatriate" has the meaning given to such term by section 877A(g)(1).

* * * * * * *

B. CHANGES IN EXISTING LAW PROPOSED BY THE BILL, AS REPORTED

In compliance with clause 3(e)(1)(B) of rule XIII of the Rules of the House of Representatives, changes in existing law proposed by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

* * * * * * *

Subtitle B—Estate and Gift Taxes

* * * * * * *

CHAPTER 11—ESTATE TAX

* * * * * * *

Subchapter C—Miscellaneous

* * * * * * *

Sec. 2210. Termination.

* * * * * * *

SEC. 2210. TERMINATION.

(a) IN GENERAL.—Except as provided in subsection (b), this chapter shall not apply to the estates of decedents dying on or after the date of the enactment of the Death Tax Repeal Act of 2015.

(b) CERTAIN DISTRIBUTIONS FROM QUALIFIED DOMESTIC TRUSTS.—In applying section 2056A with respect to the surviving spouse of a decedent dying before the date of the enactment of the Death Tax Repeal Act of 2015—

(1) section 2056A(b)(1)(A) shall not apply to distributions made after the 10-year period beginning on such date, and

(2) section 2056A(b)(1)(B) shall not apply on or after such date.

* * * * * * *

CHAPTER 12—GIFT TAX

* * * * * * *

Subchapter A—Determination of Tax Liability

* * * * * * *

[Sec. 2505. Unified credit against gift tax.]

Sec. 2505. Credit against gift tax.

* * * * * * *

SEC. 2502. RATE OF TAX.

[(a) COMPUTATION OF TAX.—The tax imposed by section 2501 for each calendar year shall be an amount equal to the excess of—

[(1) a tentative tax, computed under section 2001(c), on the aggregate sum of the taxable gifts for such calendar year and for each of the preceding calendar periods, over

❲(2) a tentative tax, computed under such section, on the aggregate sum of the taxable gifts for each of the preceding calendar periods.❳

(a) COMPUTATION OF TAX.—

(1) IN GENERAL.—The tax imposed by section 2501 for each calendar year shall be an amount equal to the excess of—

(A) a tentative tax, computed under paragraph (2), on the aggregate sum of the taxable gifts for such calendar year and for each of the preceding calendar periods, over

(B) a tentative tax, computed under paragraph (2), on the aggregate sum of the taxable gifts for each of the preceding calendar periods.

(2) RATE SCHEDULE.—

If the amount with respect to which the tentative tax to be computed is:.	***The tentative tax is:***
Not over $10,000	*18% of such amount.*
Over $10,000 but not over $20,000	*$1,800, plus 20% of the excess over $10,000.*
Over $20,000 but not over $40,000	*$3,800, plus 22% of the excess over $20,000.*
Over $40,000 but not over $60,000	*$8,200, plus 24% of the excess over $40,000.*
Over $60,000 but not over $80,000	*$13,000, plus 26% of the excess over $60,000.*
Over $80,000 but not over $100,000	*$18,200, plus 28% of the excess over $80,000.*
Over $100,000 but not over $150,000	*$23,800, plus 30% of the excess over $100,000.*
Over $150,000 but not over $250,000	*$38,800, plus 32% of the excess of $150,000.*
Over $250,000 but not over $500,000	*$70,800, plus 34% of the excess over $250,000.*
Over $500,000	*$155,800, plus 35% of the excess of $500,000.*

(b) PRECEDING CALENDAR PERIOD.—Whenever used in this title in connection with the gift tax imposed by this chapter, the term "preceding calendar period" means—

(1) calendar years 1932 and 1970 and all calendar years intervening between calendar year 1932 and calendar year 1970,

(2) the first calendar quarter of calendar year 1971 and all calendar quarters intervening between such calendar quarter and the first calendar quarter of calendar year 1982, and

(3) all calendar years after 1981 and before the calendar year for which the tax is being computed.

For purposes of paragraph (1), the term "calendar year 1932" includes only that portion of such year after June 6, 1932.

(c) TAX TO BE PAID BY DONOR.—The tax imposed by section 2501 shall be paid by the donor.

* * * * * * *

SEC. 2505. ❲UNIFIED❳ CREDIT AGAINST GIFT TAX.

(a) GENERAL RULE.—In the case of a citizen or resident of the United States, there shall be allowed as a credit against the tax imposed by section 2501 for each calendar year an amount equal to—

⟦(1) the applicable credit amount in effect under section 2010(c) which would apply if the donor died as of the end of the calendar year, reduced by⟧

(1) the amount of the tentative tax which would be determined under the rate schedule set forth in section 2502(a)(2) if the amount with respect to which such tentative tax is to be computed were $5,000,000, reduced by

(2) the sum of the amounts allowable as a credit to the individual under this section for all preceding calendar periods.

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

(b) ADJUSTMENT TO CREDIT FOR CERTAIN GIFTS MADE BEFORE 1977.—The amount allowable under subsection (a) shall be reduced by an amount equal to 20 percent of the aggregate amount allowed as a specific exemption under section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) with respect to gifts made by the individual after September 8, 1976.

(c) LIMITATION BASED ON AMOUNT OF TAX.—The amount of the credit allowed under subsection (a) for any calendar year shall not exceed the amount of the tax imposed by section 2501 for such calendar year.

(d) INFLATION ADJUSTMENT.—

(1) IN GENERAL.—In the case of any calendar year after 2011, the dollar amount in subsection (a)(1) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting "calendar year 2010" for "calendar year 1992" in subparagraph (B) thereof.

(2) ROUNDING.—If any amount as adjusted under paragraph (1) is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.

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Subchapter B—Transfers

SEC. 2511. TRANSFERS IN GENERAL.

(a) SCOPE.—Subject to the limitations contained in this chapter, the tax imposed by section 2501 shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible; but in the case of a nonresident not a citizen of the United States, shall apply to a transfer only if the property is situated within the United States.

(b) INTANGIBLE PROPERTY.—For purposes of this chapter, in the case of a nonresident not a citizen of the United States who is excepted from the application of section 2501(a)(2)—

(1) shares of stock issued by a domestic corporation, and

(2) debt obligations of—

(A) a United States person, or

(B) the United States, a State or any political subdivision thereof, or the District of Columbia,

which are owned and held by such nonresident shall be deemed to be property situated within the United States.

(c) TREATMENT OF CERTAIN TRANSFERS IN TRUST.—Notwithstanding any other provision of this section and except as provided in regulations, a transfer in trust shall be treated as a taxable gift under section 2503, unless the trust is treated as wholly owned by the donor or the donor's spouse under subpart E of part I of subchapter J of chapter 1.

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CHAPTER 13—TAX ON GENERATION-SKIPPING TRANSFERS

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Subchapter G—Administration

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Sec. 2664. Termination.

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SEC. 2664. TERMINATION.

This chapter shall not apply to generation-skipping transfers on or after the date of the enactment of the Death Tax Repeal Act of 2015.

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CHAPTER 15—GIFTS AND BEQUESTS FROM EXPATRIATES

SEC. 2801. IMPOSITION OF TAX.

(a) IN GENERAL.—If, during any calendar year, any United States citizen or resident receives any covered gift or bequest, there is hereby imposed a tax equal to the product of—

(1) the highest rate of tax specified in the table contained in ❲section 2001(c) as in effect on the date of such receipt❳ *section 2502(a)(2)*, and

(2) the value of such covered gift or bequest.

(b) TAX TO BE PAID BY RECIPIENT.—The tax imposed by subsection (a) on any covered gift or bequest shall be paid by the person receiving such gift or bequest.

(c) EXCEPTION FOR CERTAIN GIFTS.—Subsection (a) shall apply only to the extent that the value of covered gifts and bequests received by any person during the calendar year exceeds the dollar amount in effect under section 2503(b) for such calendar year.

(d) TAX REDUCED BY FOREIGN GIFT OR ESTATE TAX.—The tax imposed by subsection (a) on any covered gift or bequest shall be reduced by the amount of any gift or estate tax paid to a foreign country with respect to such covered gift or bequest.

(e) COVERED GIFT OR BEQUEST.—

(1) IN GENERAL.—For purposes of this chapter, the term "covered gift or bequest" means—

(A) any property acquired by gift directly or indirectly from an individual who, at the time of such acquisition, is a covered expatriate, and

(B) any property acquired directly or indirectly by reason of the death of an individual who, immediately before such death, was a covered expatriate.

(2) EXCEPTIONS FOR TRANSFERS OTHERWISE SUBJECT TO ESTATE OR GIFT TAX.—Such term shall not include—

(A) any property shown on a timely filed return of tax imposed by chapter 12 which is a taxable gift by the covered expatriate, and

(B) any property included in the gross estate of the covered expatriate for purposes of chapter 11 and shown on a timely filed return of tax imposed by chapter 11 of the estate of the covered expatriate.

(3) EXCEPTIONS FOR TRANSFERS TO SPOUSE OR CHARITY.—Such term shall not include any property with respect to which a deduction would be allowed under section 2055, 2056, 2522, or 2523, whichever is appropriate, if the decedent or donor were a United States person.

(4) TRANSFERS IN TRUST.—

(A) DOMESTIC TRUSTS.—In the case of a covered gift or bequest made to a domestic trust—

(i) subsection (a) shall apply in the same manner as if such trust were a United States citizen, and

(ii) the tax imposed by subsection (a) on such gift or bequest shall be paid by such trust.

(B) FOREIGN TRUSTS.—

(i) IN GENERAL.—In the case of a covered gift or bequest made to a foreign trust, subsection (a) shall apply to any distribution attributable to such gift or bequest from such trust (whether from income or corpus) to a United States citizen or resident in the same manner as if such distribution were a covered gift or bequest.

(ii) DEDUCTION FOR TAX PAID BY RECIPIENT.—There shall be allowed as a deduction under section 164 the amount of tax imposed by this section which is paid or accrued by a United States citizen or resident by reason of a distribution from a foreign trust, but only to the extent such tax is imposed on the portion of such distribution which is included in the gross income of such citizen or resident.

(iii) ELECTION TO BE TREATED AS DOMESTIC TRUST.—Solely for purposes of this section, a foreign trust may elect to be treated as a domestic trust. Such an election may be revoked with the consent of the Secretary.

(f) COVERED EXPATRIATE.—For purposes of this section, the term "covered expatriate" has the meaning given to such term by section 877A(g)(1).

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VII. DISSENTING VIEWS

Committee Democrats oppose H.R. 1105. The estate tax has been an important component of our tax code that promotes fairness and reduces economic inequality. Repeal of the estate tax would increase the deficit by more than a quarter of a trillion dollars to provide tax cuts to the wealthiest estates in our country.

Estate taxes promote fairness by providing an essential counterweight to the extraordinary benefits conferred on inherited wealth under our income tax system, and work to mitigate the impacts of wealth inequality. This legislation would further exacerbate the growing wealth and income inequality in the United States. The wealth gap is a problem for the economic health of the country as studies have consistently found that significant disparities in wealth correlate with poor economic performance. The share of total wealth owned by the top 0.1% in the U.S. grew from 7% in 1978 to 22% in 2012, according to the National Bureau of Economic Research. In 2013, the median wealth of upper income families ($639,400) was nearly seven times the median wealth of middle income families ($96,500), the widest wealth gap since the Federal Reserve began collecting data 30 years ago. The Congress must not accelerate our country's growing wealth inequality by conferring extraordinary tax benefits on the small number of ultra-wealthy taxpayers.

Under present law, estates valued at less than $5.43 million ($10.86 million jointly) are exempt from the estate tax, with this exemption increasing annually for inflation. The reach of the estate tax has been significantly reduced over the past decade as the exemption amounts have increased so significantly over time such that 99.85 percent of estates are not subject to any estate tax. While the majority argues that the estate tax burdens all Americans, the fact is that only the estates of the wealthiest 0.15 percent pay any estate tax at all. Analysis from the Joint Committee on Taxation shows that H.R. 1105 would provide an average tax cut of over $22 million to each estate valued at over $50 million.

These tax cuts for the wealthiest of estates would come at a cost of nearly $270 billion over the 10-year window. This is more than the budgets for the Centers for Disease Control and Prevention, the Food and Drug Administration, and the Environmental Protection Agency combined. In past years, the Republican Congress has battled over spending the dollars required to provide adequate funding for National Institutes for Health, which has an annual budget of $30.9 billion. Misguided Republican priorities have led to consistent underfunding of important research and public health institutions, while draining the fisc to deliver hundreds of billions of tax cuts for the nation's wealthiest. Furthermore, the Republican budget does not include repeal of the estate tax, which, if passed, would put their own budget out of balance. Indeed, the Republican Tax

Reform plan that was released last year recognized the significant cost of repeal, both in terms of the revenue raised by the tax and by distribution, and retained the estate tax.

The issue of the estate tax affecting small businesses and family farms has been used as a justification for outright repeal of the estate tax. In general, a small percentage of taxable estates contain farm or business assets. According to recent Internal Revenue Service and U.S. Department of Agriculture data, roughly 0.6 percent of all farm operator estates owed any estate tax, with 97.3 percent of all farm operator estates falling below the current exemption. Committee Democrats do not disagree with the importance of maintaining protections for small businesses and family farms. Congress has recognized their importance and has included exemptions and special provisions to address perceived burdens in existing law. If those protections are inadequate, the Congress can act to ensure that working family farms and active small businesses are not harmed without eviscerating the wealth transfer tax regime.

It is important to shed light on an argument put forth by Republicans on the Committee during the Committee's consideration of this issue. During the Select Revenue Measures Subcommittee hearing on the burdens of the estate tax on family farms and small businesses and the recent full committee markup of H.R. 1105, a Republican Committee Member argued that the estate tax had the effect of capturing as much as 10 to 13 percent of African American wealth, and cited to a Boston College Center on Wealth and Philanthropy study. During his remarks, he referenced an article published by the National Black Chamber of Commerce, and referred to the tax as a "Black Tax." Simple research into the study shows that these inflammatory assertions are based on flawed assumptions and outdated data. At the markup, Committee Democrats submitted a table from the very same Boston College study that showed 0.00% of African American households had a net worth exceeding $5 million—lower than the existing exemption amount of $5.43 million ($10.46 jointly). Furthermore, the authors of this study analyzed the law as was in place at the time, and could not have contemplated the significant permanent expansions to the exemptions that were enacted in 2012. Unfortunately, the fact that tables in the study clearly contradict inflammatory arguments made by Committee Republicans has not stopped them from using the arguments to repeal the estate tax.

SANDER M. LEVIN.

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