

106TH CONGRESS
1ST SESSION

S. 1128

To amend the Internal Revenue Code of 1986 to repeal the Federal estate and gift taxes and the tax on generation-skipping transfers, to provide for a carryover basis at death, and to establish a partial capital gains exclusion for inherited assets.

IN THE SENATE OF THE UNITED STATES

MAY 26, 1999

Mr. KYL (for himself, Mr. KERREY, Mr. NICKLES, Mr. BREAUX, Mr. MACK, Mr. ROBB, and Mr. GRAMM) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to repeal the Federal estate and gift taxes and the tax on generation-skipping transfers, to provide for a carryover basis at death, and to establish a partial capital gains exclusion for inherited assets.

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 “Estate Tax Elimination Act of 1999”.
5

1 **SEC. 2. REPEAL OF CERTAIN FEDERAL TRANSFER TAXES.**

2 (a) IN GENERAL.—Subtitle B of the Internal Rev-
3 enue Code of 1986 is hereby repealed.

4 (b) EFFECTIVE DATE.—The repeal made by sub-
5 section (a) shall apply to the estates of decedents dying,
6 and gifts and generation-skipping transfers made, after
7 the date of enactment of this Act.

8 (c) TECHNICAL AND CONFORMING CHANGES.—The
9 Secretary of the Treasury or the Secretary's delegate
10 shall, as soon as practicable but in any event not later
11 than 90 days after the date of enactment of this Act, sub-
12 mit to the Committee on Ways and Means of the House
13 of Representatives and the Committee on Finance of the
14 Senate a draft of any technical and conforming changes
15 in the Internal Revenue Code of 1986 which are necessary
16 to reflect throughout such Code the changes in the sub-
17 stantive provisions of law made by this Act.

18 **SEC. 3. TERMINATION OF A STEP UP IN BASIS AT DEATH.**

19 (a) TERMINATION OF APPLICATION OF SECTION
20 1014.—Section 1014 of the Internal Revenue Code of
21 1986 (relating to basis of property acquired from a dece-
22 dent) is amended by adding at the end the following:

23 “(f) TERMINATION.—In the case of a decedent dying
24 after the date of enactment of the Estate Tax Elimination
25 Act of 1999, this section shall not apply to property for
26 which basis is provided by section 1022.”

(b) CONFORMING AMENDMENT.—Subsection (a) of section 1016 of the Internal Revenue Code of 1986 (relating to adjustments to basis) is amended by striking “and” at the end of paragraph (26), by striking the period at the end of paragraph (27) and inserting “; and”, and by adding at the end the following:

“(28) to the extent provided in section 1022 (relating to basis for certain property acquired from a decedent dying after the date of enactment of the Estate Tax Elimination Act of 1999.”

SEC. 4. CARRYOVER BASIS AT DEATH.

(a) GENERAL RULE.—Part II of subchapter O of chapter 1 of the Internal Revenue Code of 1986 (relating to basis rules of general application) is amended by inserting after section 1021 the following:

**“SEC. 1022. CARRYOVER BASIS FOR CERTAIN PROPERTY
ACQUIRED FROM A DECEDENT.**

“(a) CARRYOVER BASIS.—

“(1) IN GENERAL.—Except as otherwise provided in this section, the basis of carryover basis property in the hands of a person acquiring such property from a decedent is—

“(A) its initial basis, increased by

1 “(B) its allowable share of the decedent’s
2 exclusion allowance determined under sub-
3 section (c).

4 “(2) INITIAL BASIS.—The initial basis of carry-
5 over basis property is its adjusted basis for purposes
6 of determining gain immediately before the death of
7 the decedent.

8 “(b) CARRYOVER BASIS PROPERTY DEFINED.—

9 “(1) IN GENERAL.—For purposes of this sec-
10 tion, the term ‘carryover basis property’ means any
11 property—

12 “(A) which is acquired from or passed
13 from a decedent who died after the date of en-
14 actment of the Estate Tax Elimination Act of
15 1999, and

16 “(B) which is not excluded pursuant to
17 paragraph (2) or (3).

18 The property taken into account under subpara-
19 graph (A) shall be determined under section 1014(b)
20 without regard to subparagraph (A) of the last sen-
21 tence of paragraph (9) thereof.

22 “(2) CERTAIN PROPERTY NOT CARRYOVER
23 BASIS PROPERTY.—The term ‘carryover basis prop-
24 erty’ does not include—

25 “(A) property which—

1 “(i) was acquired from the decedent
2 before the decedent’s death, and

3 “(ii) was sold, exchanged, or otherwise
4 disposed of before the decedent’s death by
5 the person so acquiring it,

6 “(B) any item of gross income in respect
7 of a decedent described in section 691;

8 “(C) property described in section 2042
9 (relating to proceeds of life insurance), as in ef-
10 fect on the day before the date of enactment of
11 the Estate Tax Elimination Act of 1999;

12 “(D) property described in section
13 1014(b)(5); and

14 “(E) property which was acquired from the
15 decedent by the surviving spouse of the dece-
16 dent, the value of which would have been de-
17 ductible from the value of the taxable estate of
18 the decedent under section 2056, as in effect on
19 the day before the date of enactment of the Es-
20 tate Tax Elimination Act of 1999.

21 “(3) \$50,000 EXCLUSION FOR TANGIBLE PER-
22 SONAL PROPERTY.—

23 “(A) EXCLUSION.—The term ‘carryover
24 basis property’ does not include any tangible
25 personal property—

1 “(i) which, in the hands of the dece-
 2 dent, was a capital asset, and

3 “(ii) with respect to which the execu-
 4 tor has made an election under this para-
 5 graph.

6 “(B) LIMITATION.—The fair market value
 7 of all assets designated under this subsection
 8 with respect to any decedent shall not exceed
 9 \$50,000.

10 “(C) ELECTION.—An election under this
 11 paragraph with respect to any asset shall be
 12 made by the executor not later than the date
 13 prescribed for filing the return required under
 14 section 6039H(a), and shall be made on such
 15 return.

16 “(c) EXCLUSION ALLOWANCE.—

17 “(1) BASIS ADJUSTMENT.—

18 “(A) IN GENERAL.—The basis adjustment
 19 under this subsection for any carryover basis
 20 property is—

21 “(i) the portion of the decedent’s fam-
 22 ily-owned business interest exclusion allow-
 23 ance which is allocated to property exclu-
 24 sively used by the qualified family-owned

1 business interest pursuant to this section,
 2 and

3 “(ii) the portion of the decedent’s gen-
 4 eral exclusion allowance which is allocated
 5 to property pursuant to this section (deter-
 6 mined after the allocation under clause
 7 (i)).

8 “(B) LIMITATION.—Such basis adjustment
 9 for any property shall not exceed the net appre-
 10 ciation in such property.

11 “(C) NET APPRECIATION.—For purposes
 12 of this subsection, the net appreciation in value
 13 of any property is the amount by which—

14 “(i) the fair market value of such
 15 property, exceeds

16 “(ii) the initial basis of such property.

17 “(D) DECEDENT’S FAMILY-OWNED BUSI-
 18 NESS INTEREST EXCLUSION ALLOWANCE.—In
 19 the case of any estate, the decedent’s family-
 20 owned business interest exclusion allowance
 21 shall be equal to the lesser of—

22 “(i) the excess of—

23 “(I) \$1,300,000, over

24 “(II) the applicable dollar
 25 amount, or

1 “(ii) the aggregate net appreciation of
 2 all carryover basis property exclusively
 3 used by the qualified family-owned busi-
 4 ness interest.

5 “(E) DECEDENT’S GENERAL EXCLUSION
 6 ALLOWANCE.—In the case of any estate, the de-
 7 cedent’s general exclusion allowance shall be
 8 equal to the lesser of—

9 “(i) the applicable amount, or

10 “(ii) the aggregate net appreciation of
 11 all carryover basis property not described
 12 in subparagraph (D)(ii).

13 “(F) APPLICABLE AMOUNT.—

14 “(i) IN GENERAL.—For purposes of
 15 this subsection, the applicable amount for
 16 any decedent is equal to the sum of—

17 “(I) the applicable dollar amount,
 18 and

19 “(II) in the case of a decedent
 20 with a deceased spouse whose dece-
 21 dent’s allowance was less than the ap-
 22 plicable amount for such spouse the
 23 unallocated portion of such amount.

24 “(ii) APPLICABLE DOLLAR AMOUNT.—

25 For purposes of clause (i)(I), the applica-

1 ble dollar amount shall be the dollar
2 amount set forth in the following table:

“In the case of estates of decedents dying, and gifts made, during:	The applicable dollar amount is:
1999	\$650,000
2000 and 2001	\$675,000
2002 and 2003	\$700,000
2004	\$850,000
2005	\$950,000
2006	\$1,000,000.

3 “(G) QUALIFIED FAMILY-OWNED BUSI-
4 NESS INTEREST.—For purposes of this section,
5 the ‘qualified family-owned business interest’
6 has the meaning given such term by section
7 2057(e), as in effect on the day before the date
8 of enactment of the Estate Tax Elimination Act
9 of 1999.

10 “(2) ALLOCATION RULES.—

11 “(A) IN GENERAL.—The executor shall al-
12 locate the adjustments under this subsection
13 among the carryover basis properties on the re-
14 turn required under section 6039H(a).

15 “(B) CHANGES IN ALLOCATION.—Any allo-
16 cation made pursuant to subparagraph (A) may
17 be changed at any time before the close of the
18 30th day after the initial basis finality date.
19 The allocation in effect at the close of such
20 30th day may be changed only with the consent
21 of the Secretary.

1 “(C) INITIAL BASIS FINALITY DATE.—For
 2 purposes of this paragraph, the term ‘initial
 3 basis finality date’ means the last day on which
 4 the initial basis of property may be changed in
 5 an administrative or judicial proceeding re-
 6 ferred to in section 7480.

7 “(d) SPECIAL RULES AND DEFINITIONS.—For pur-
 8 poses of this section—

9 “(1) TREATMENT OF ITEMS ON A CLASS
 10 BASIS.—Under regulations prescribed by the Sec-
 11 retary, the holding periods, bases, and fair market
 12 value of similar items falling within the same class
 13 of property may be determined on a class basis rath-
 14 er than on an individual item basis.

15 “(2) PERSONAL AND HOUSEHOLD EFFECTS.—

16 “(A) LOSS.—In the case of any carryover
 17 basis property which, in the hands of the dece-
 18 dent, was a personal or household effect, for
 19 purposes of determining loss the basis of such
 20 property in the hands of the person acquiring
 21 such property from the decedent shall not ex-
 22 ceed its fair market value.

23 “(B) DETERMINATION OF MINIMUM
 24 BASIS.—The basis of any property which is a
 25 personal or household effect shall be treated as

1 not greater than the fair market value of such
2 property.

3 “(3) FAIR MARKET VALUE.—For purposes of
4 this section, when not otherwise distinctly expressed,
5 the term ‘fair market value’ means value determined
6 without regard to whether there is a mortgage on,
7 or indebtedness in respect of, the property.

8 “(4) FAIR MARKET VALUE LIMITATION.—The
9 adjustment under subsection (c) shall not increase
10 the basis of property above its fair market value.

11 “(5) PROPERTY PASSING FROM THE DECE-
12 DENT.—For purposes of this section, property pass-
13 ing from the decedent shall be treated as property
14 acquired from the decedent.

15 “(6) NONRESIDENTS NOT CITIZENS.—In the
16 case of a decedent who was (at the time of his
17 death) a nonresident not a citizen of the United
18 States—

19 “(A) subsection (b)(3) shall not apply, and

20 “(B) there shall be no basis adjustment
21 under subsection (c).

22 “(e) REGULATIONS.—The Secretary shall prescribe
23 such regulations as may be necessary to carry out the pur-
24 poses of this section.”

1 (b) PROCEDURE FOR BINDING DETERMINATION OF
2 INITIAL BASIS.—

3 (1) IN GENERAL.—Part IV of subchapter C of
4 chapter 76 of the Internal Revenue Code of 1986
5 (relating to declaratory judgments) is amended by
6 adding at the end the following:

7 **“SEC. 7480. PROCEDURE FOR BINDING DETERMINATION OF**
8 **INITIAL BASIS OF CARRYOVER BASIS PROP-**
9 **ERTY.**

10 “(a) ADMINISTRATIVE AUDIT.—

11 “(1) DESIGNATION BY EXECUTOR.—An execu-
12 tor may request the Secretary to audit the initial
13 basis of any carryover basis property which is shown
14 on the return required under section 6039H(a). Any
15 such request shall be made on such return.

16 “(2) AUTHORITY OF THE SECRETARY.—For
17 purposes of examining the correctness of the initial
18 basis of any property with respect to which an ex-
19 ecutor has made a request under paragraph (1), the
20 Secretary shall have the same authority as if he
21 were determining the liability of any person for a tax
22 imposed by this title.

23 “(b) JUDICIAL REVIEW.—

24 “(1) BRINGING OF ACTION.—If the executor
25 and the Secretary have not entered into an agree-

1 ment described in subsection (c)(2) with respect to
2 any property for which a request has been made
3 under subsection (a)(1), the executor may bring an
4 action in the Tax Court with respect to such prop-
5 erty.

6 “(2) DECLARATION BY TAX COURT.—Upon the
7 filing of an appropriate pleading in an action
8 brought under paragraph (1), the Tax Court may
9 make a declaration of the initial basis of the prop-
10 erty with respect to which such an action is brought.
11 Any such declaration shall be final and conclusive
12 and shall not be reviewed by any other court.

13 “(3) TIME FOR BRINGING ACTION.—No action
14 may be brought under this subsection with respect
15 to any property unless the pleading is filed—

16 “(A) after the expiration of 1 year after
17 the date on which the executor made a request
18 under subsection (a)(1) with respect to such
19 property, and

20 “(B) before the 91st day after the later
21 of—

22 “(i) the day on which the Secretary
23 sends by certified or registered mail a noti-
24 fication of his disagreement with the initial

1 basis of the property shown on the return
 2 required under section 6039H(a), or

3 “(ii) the expiration of the 1-year pe-
 4 riod referred to in subparagraph (A).

5 “(c) BINDING EFFECT OF DETERMINATIONS.—

6 “(1) NO NOTICE FROM SECRETARY.—If—

7 “(A) an executor makes a request under
 8 subsection (a)(1) with respect to the initial
 9 basis of any property, and

10 “(B) before the date 3 years after the day
 11 on which such request is made, the Secretary
 12 does not send to the executor by certified or
 13 registered mail notice of his disagreement with
 14 the initial basis of such property shown on the
 15 return required under section 6039H(a),

16 then the initial basis so shown shall be binding and
 17 conclusive on the Secretary and on any person whose
 18 basis in such property is affected by such initial
 19 basis unless any such person establishes a different
 20 initial basis to the satisfaction of the Secretary.

21 “(2) AGREEMENT BETWEEN SECRETARY AND
 22 EXECUTOR.—If the executor and the Secretary sign
 23 a written agreement as to the initial basis of any
 24 property with respect to which the executor made a
 25 request under subsection (a)(1), such agreement

1 shall be binding and conclusive on the Secretary and
 2 on any person whose basis in such property is af-
 3 fected by the initial basis in the same manner as if
 4 such agreement were a closing agreement under sec-
 5 tion 7121 between the Secretary and such person.

6 “(3) TAX COURT DECISION BINDING ON
 7 HEIRS.—Any declaration of the initial basis of any
 8 property made by the Tax Court which has become
 9 final shall also be binding on any person whose basis
 10 in the property is affected by the initial basis.

11 “(d) INTERVENTION.—Any person whose basis in any
 12 property is affected by the initial basis of any property
 13 shall be allowed to intervene in any administrative or judi-
 14 cial proceeding under this section with respect to such
 15 property.

16 “(e) DEFINITIONS.—Terms used in this section
 17 which are also used in section 1022 shall have the mean-
 18 ings as when used in section 1022.”

19 (2) CLERICAL AMENDMENT.—The table of sec-
 20 tions for part IV of subchapter C of chapter 76 of
 21 such Code is amended by adding at the end the fol-
 22 lowing:

“Sec. 7480. Procedure for binding determination of initial basis
 of carryover basis property.”

23 (c) INFORMATION RETURNS; ASSESSABLE PENALTY
 24 FOR NEGLIGENT OR FRAUDULENT OVERSTATEMENT OF

1 INITIAL BASIS; PENALTIES FOR FAILURE TO FURNISH
2 INFORMATION.—

3 (1) INFORMATION RETURNS.—Subpart A of
4 part III of subchapter A of chapter 61 of the Inter-
5 nal Revenue Code of 1986 (relating to information
6 concerning persons subject to special provisions) is
7 amended by adding after section 6039G the fol-
8 lowing:

9 **“SEC. 6039H. INFORMATION REGARDING CARRYOVER BASIS**
10 **PROPERTY ACQUIRED FROM A DECEDENT.**

11 “(a) IN GENERAL.—Every executor shall furnish the
12 Secretary such information with respect to carryover basis
13 property to which section 1022 applies as the Secretary
14 may by regulations prescribe.

15 “(b) STATEMENTS TO BE FURNISHED TO PERSONS
16 WHO ACQUIRE PROPERTY FROM A DECEDENT.—Every
17 executor who is required to furnish information under sub-
18 section (a) shall furnish in writing to each person acquir-
19 ing an item of such property from the decedent (or to
20 whom the item passes from the decedent) the adjusted
21 basis of such item.”

22 (2) PENALTIES.—Part I of subchapter B of
23 chapter 68 of such Code (relating to assessable pen-
24 alties) is amended by adding at the end the fol-
25 lowing:

1 **“SEC. 6716. FAILURE TO FILE INFORMATION WITH RESPECT**
2 **TO CARRYOVER BASIS PROPERTY.**

3 “(a) INFORMATION REQUIRED TO BE FURNISHED
4 TO THE SECRETARY.—Any executor who fails to furnish
5 information required under section 6039H(a) on the date
6 prescribed therefor (determined with regard to any exten-
7 sion of time for filing) shall, if such failure is due to neg-
8 ligence or intentional disregard of rules and regulations,
9 pay a penalty of \$100 for each such failure, but the total
10 amount imposed for all such failures shall not exceed
11 \$5,000.

12 “(b) INFORMATION REQUIRED TO BE FURNISHED
13 TO BENEFICIARIES.—Any executor who fails to furnish in
14 writing to each person described in section 6039H(b) the
15 information required under such section shall, if such fail-
16 ure is due to negligence or intentional disregard of rules
17 and regulations, pay a penalty of \$50 for each such fail-
18 ure, but the total amount imposed for all such failures
19 shall not exceed \$2,500.

20 “(c) NEGLIGENT OR FRAUDULENT OVERSTATEMENT
21 OF INITIAL BASIS.—

22 “(1) NEGLIGENT OVERSTATEMENT.—If any
23 part of an initial basis overstatement is due to neg-
24 ligence or intentional disregard of rules and regula-
25 tions (but without intent to defraud) by the execu-

1 tor, such executor shall pay a penalty equal to 10
2 percent of such overstatement.

3 “(2) FRAUDULENT OVERSTATEMENT.—If any
4 part of an initial basis overstatement is due to fraud
5 by the executor, such executor shall pay a penalty
6 equal to 30 percent of such overstatement.

7 “(3) INITIAL BASIS OVERSTATEMENT DE-
8 FINED.—For purposes of this subsection, the term
9 ‘initial basis overstatement’ means the excess of—

10 “(A) the initial basis of any carryover basis
11 property shown on the return required under
12 section 6039H(a), over

13 “(B) the amount determined to be the ini-
14 tial basis of such property.

15 “(d) DEFICIENCY PROCEDURES NOT TO APPLY.—
16 Subchapter B of chapter 63 shall not apply in respect of
17 the assessment or collection of any penalty imposed by this
18 section.”

19 (3) CLERICAL AMENDMENTS.—

20 (A) The table of sections for subpart A of
21 part III of subchapter A of chapter 61 of such
22 Code is amended by adding after the item relat-
23 ing to section 6039G the following:

 “Sec. 6039H. Information regarding carryover basis property ac-
 quired from a decedent.”

1 (B) The table of sections for part I of sub-
 2 chapter B of chapter 68 of such Code is amend-
 3 ed by adding at the end the following:

“Sec. 6716. Failure to file information with respect to carryover
 basis property.”

4 (d) MISCELLANEOUS AMENDMENTS RELATED TO
 5 CARRYOVER BASIS.—

6 (1) CAPITAL GAIN TREATMENT FOR INHERITED
 7 ART WORK OR SIMILAR PROPERTY.—

8 (A) IN GENERAL.—Subparagraph (C) of
 9 section 1221(3) of the Internal Revenue Code
 10 of 1986 (defining capital asset) is amended by
 11 inserting “(other than by reason of section
 12 1022)” after “is determined”.

13 (B) COORDINATION WITH SECTION 170.—
 14 Paragraph (1) of section 170(e) of such Code
 15 (relating to certain contributions of ordinary in-
 16 come and capital gain property) is amended by
 17 adding at the end the following: “For purposes
 18 of this paragraph, the determination of whether
 19 property is a capital asset shall be made with-
 20 out regard to the exception contained in section
 21 1221(3)(C) for basis determined under section
 22 1022.”

1 (2) DEFINITION OF EXECUTOR.—Section
2 7701(a) of such Code (relating to definitions) is
3 amended by adding at the end the following:

4 “(47) EXECUTOR.—The term ‘executor’ means
5 the executor or administrator of the decedent, or, if
6 there is no executor or administrator appointed,
7 qualified, and acting within the United States, then
8 any person in actual or constructive possession of
9 any property of the decedent.”

10 (e) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to estates of decedents dying after
12 the date of enactment of this Act.

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