

106TH CONGRESS
1ST SESSION

S. 1975

To amend the Internal Revenue Code of 1986 to modify the tax on generation-skipping transfers to eliminate certain traps for the unwary and otherwise improve the fairness of such tax.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 19, 1999

Mr. MACK (for himself and Mr. BREAUX) 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 modify the tax on generation-skipping transfers to eliminate certain traps for the unwary and otherwise improve the fairness of such tax.

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 “Generation-Skipping
5 Transfer Tax Amendments Act of 1999”.

1 **SEC. 2. DEEMED ALLOCATION OF GST EXEMPTION TO LIFE-**
 2 **TIME TRANSFERS TO TRUSTS; RETROACTIVE**
 3 **ALLOCATIONS.**

4 (a) IN GENERAL.—Section 2632 of the Internal Rev-
 5 enue Code of 1986 (relating to special rules for allocation
 6 of GST exemption) is amended by redesignating sub-
 7 section (c) as subsection (e) and by inserting after sub-
 8 section (b) the following new subsections:

9 “(c) DEEMED ALLOCATION TO CERTAIN LIFETIME
 10 TRANSFERS TO GST TRUSTS.—

11 “(1) IN GENERAL.—If any individual makes an
 12 indirect skip during such individual’s lifetime, any
 13 unused portion of such individual’s GST exemption
 14 shall be allocated to the property transferred to the
 15 extent necessary to make the inclusion ratio for such
 16 property zero. If the amount of the indirect skip ex-
 17 ceeds such unused portion, the entire unused portion
 18 shall be allocated to the property transferred.

19 “(2) UNUSED PORTION.—For purposes of para-
 20 graph (1), the unused portion of an individual’s
 21 GST exemption is that portion of such exemption
 22 which has not previously been—

23 “(A) allocated by such individual,

24 “(B) treated as allocated under subsection
 25 (b) with respect to a direct skip occurring dur-

ing or before the calendar year in which the indirect skip is made, or

“(C) treated as allocated under paragraph (1) with respect to a prior indirect skip.

“(3) DEFINITIONS.—

“(A) INDIRECT SKIP.—For purposes of this subsection, the term ‘indirect skip’ means any transfer of property subject to the tax imposed by chapter 12 made to a GST trust.

“(B) GST TRUST.—The term ‘GST trust’ means a trust that could have a generation-skipping transfer with respect to the transferor unless—

“(i) the trust instrument provides that more than 25 percent of the trust corpus must be distributed to or may be withdrawn by 1 or more individuals who are non-skip persons—

“(I) before the date that the individual attains age 46,

“(II) on or before 1 or more dates specified in the trust instrument that will occur before the date that such individual attains age 46, or

1 “(III) upon the occurrence of an
2 event that, in accordance with regula-
3 tions prescribed by the Secretary, may
4 reasonably be expected to occur before
5 the date that such individual attains
6 age 46;

7 “(ii) the trust instrument provides
8 that more than 25 percent of the trust cor-
9 pus must be distributed to or may be with-
10 drawn by 1 or more individuals who are
11 non-skip persons and who are living on the
12 date of death of another person identified
13 in the instrument (by name or by class)
14 who is more than 10 years older than such
15 individuals;

16 “(iii) the trust instrument provides
17 that, if 1 or more individuals who are non-
18 skip persons die on or before a date or
19 event described in clause (i) or (ii), more
20 than 25 percent of the trust corpus either
21 must be distributed to the estate or estates
22 of 1 or more of such individuals or is sub-
23 ject to a general power of appointment ex-
24 ercisable by 1 or more of such individuals;

1 “(iv) the trust is a trust any portion
2 of which would be included in the gross es-
3 tate of a non-skip person (other than the
4 transferor) if such person died immediately
5 after the transfer;

6 “(v) the trust is a charitable lead an-
7 nuity trust (within the meaning of section
8 2642(e)(3)(A)) or a charitable remainder
9 annuity trust or a charitable remainder
10 unitrust (within the meaning of section
11 664(d)); or

12 “(vi) the trust is a trust with respect
13 to which a deduction was allowed under
14 section 2522 for the amount of an interest
15 in the form of the right to receive annual
16 payments of a fixed percentage of the net
17 fair market value of the trust property (de-
18 termined yearly) and which is required to
19 pay principal to a non-skip person if such
20 person is alive when the yearly payments
21 for which the deduction was allowed termi-
22 nate.

23 For purposes of this subparagraph, the value of
24 transferred property shall not be considered to
25 be includible in the gross estate of a non-skip

person or subject to a right of withdrawal by reason of such person holding a right to withdraw so much of such property as does not exceed the amount referred to in section 2503(b) with respect to any transferor, and it shall be assumed that powers of appointment held by non-skip persons will not be exercised.

“(4) AUTOMATIC ALLOCATIONS TO CERTAIN GST TRUSTS.—For purposes of this subsection, an indirect skip to which section 2642(f) applies shall be deemed to have been made only at the close of the estate tax inclusion period. The fair market value of such transfer shall be the fair market value of the trust property at the close of the estate tax inclusion period.

“(5) APPLICABILITY AND EFFECT.—

“(A) IN GENERAL.—An individual—

“(i) may elect to have this subsection not apply to—

“(I) an indirect skip, or

“(II) any or all transfers made by such individual to a particular trust, and

“(ii) may elect to treat any trust as a GST trust for purposes of this subsection

with respect to any or all transfers made
by such individual to such trust.

“(B) ELECTIONS.—

“(i) ELECTIONS WITH RESPECT TO
INDIRECT SKIPS.—An election under sub-
paragraph (A)(i)(I) shall be deemed to be
timely if filed on a timely filed gift tax re-
turn for the calendar year in which the
transfer was made or deemed to have been
made pursuant to paragraph (4) or on
such later date or dates as may be pre-
scribed by the Secretary.

“(ii) OTHER ELECTIONS.—An election
under clause (i)(II) or (ii) of subparagraph
(A) may be made on a timely filed gift tax
return for the calendar year for which the
election is to become effective.

“(d) RETROACTIVE ALLOCATIONS.—

“(1) IN GENERAL.—If—

“(A) a non-skip person has an interest or
a future interest in a trust to which any trans-
fer has been made,

“(B) such person—

“(i) is a lineal descendant of a grand-
parent of the transferor or of a grand-

1 parent of the transferor's spouse or former
2 spouse, and

3 “(ii) is assigned to a generation below
4 the generation assignment of the trans-
5 feror, and

6 “(C) such person predeceases the trans-
7 feror,

8 then the transferor may make an allocation of any
9 of such transferor's unused GST exemption to any
10 previous transfer or transfers to the trust on a
11 chronological basis.

12 “(2) SPECIAL RULES.—If the allocation under
13 paragraph (1) by the transferor is made on a gift
14 tax return filed on or before the date prescribed by
15 section 6075(b) for gifts made within the calendar
16 year within which the non-skip person's death
17 occurred—

18 “(A) the value of such transfer or trans-
19 fers for purposes of section 2642(a) shall be de-
20 termined as if such allocation had been made
21 on a timely filed gift tax return for each cal-
22 endar year within which each transfer was
23 made,

24 “(B) such allocation shall be effective im-
25 mediately before such death, and

1 “(C) the amount of the transferor’s unused
2 GST exemption available to be allocated shall
3 be determined immediately before such death.

4 “(3) FUTURE INTEREST.—For purposes of this
5 subsection, a person has a future interest in a trust
6 if the trust may permit income or corpus to be paid
7 to such person on a date or dates in the future.”.

8 (b) CONFORMING AMENDMENT.—Paragraph (2) of
9 section 2632(b) of such Code is amended by striking “with
10 respect to a direct skip” and inserting “or subsection
11 (c)(1)”.

12 (c) EFFECTIVE DATES.—

13 (1) DEEMED ALLOCATION.—Section 2632(c) of
14 the Internal Revenue Code of 1986 (as added by
15 subsection (a)), and the amendment made by sub-
16 section (b), shall apply to transfers subject to chap-
17 ter 11 or 12 of such Code made after December 31,
18 1999, and to estate tax inclusion periods ending
19 after December 31, 1999.

20 (2) RETROACTIVE ALLOCATIONS.—Section
21 2632(d) of the Internal Revenue Code of 1986 (as
22 added by subsection (a)) shall apply to deaths of
23 non-skip persons occurring after the date of the en-
24 actment of this Act.

1 **SEC. 3. SEVERING OF TRUSTS.**

2 (a) IN GENERAL.—Subsection (a) of section 2642 of
3 the Internal Revenue Code of 1986 (relating to inclusion
4 ratio) is amended by adding at the end the following new
5 paragraph:

6 “(3) SEVERING OF TRUSTS.—

7 “(A) IN GENERAL.—If a trust is severed in
8 a qualified severance, the trusts resulting from
9 such severance shall be treated as separate
10 trusts thereafter for purposes of this chapter.

11 “(B) QUALIFIED SEVERANCE.—For pur-
12 poses of subparagraph (A)—

13 “(i) IN GENERAL.—The term ‘quali-
14 fied severance’ means the division of a sin-
15 gle trust and the creation (by any means
16 available under the governing instrument
17 or under local law) of 2 or more trusts if—

18 “(I) the single trust was divided
19 on a fractional basis, and

20 “(II) the terms of the new trusts,
21 in the aggregate, provide for the same
22 succession of interests of beneficiaries
23 as are provided in the original trust.

24 “(ii) TRUSTS WITH INCLUSION RATIO
25 GREATER THAN ZERO.—If a trust has an
26 inclusion ratio of greater than zero and

1 less than 1, a severance is a qualified sev-
2 erance only if the single trust is divided
3 into 2 trusts, one of which receives a frac-
4 tional share of the total value of all trust
5 assets equal to the applicable fraction of
6 the single trust immediately before the sev-
7 erance. In such case, the trust receiving
8 such fractional share shall have an inclu-
9 sion ratio of zero and the other trust shall
10 have an inclusion ratio of 1.

11 “(iii) REGULATIONS.—The term
12 ‘qualified severance’ includes any other
13 severance permitted under regulations pre-
14 scribed by the Secretary.

15 “(C) TIMING AND MANNER OF
16 SEVERANCES.—A severance pursuant to this
17 paragraph may be made at any time. The Sec-
18 retary shall prescribe by forms or regulations
19 the manner in which the qualified severance
20 shall be reported to the Secretary.”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall apply to severances after the date of the
23 enactment of this Act.

1 **SEC. 4. MODIFICATION OF CERTAIN VALUATION RULES.**

2 (a) GIFTS FOR WHICH GIFT TAX RETURN FILED OR
 3 DEEMED ALLOCATION MADE.—Paragraph (1) of section
 4 2642(b) of the Internal Revenue Code of 1986 (relating
 5 to valuation rules, etc.) is amended to read as follows:

6 “(1) GIFTS FOR WHICH GIFT TAX RETURN
 7 FILED OR DEEMED ALLOCATION MADE.—If the allo-
 8 cation of the GST exemption to any transfers of
 9 property is made on a gift tax return filed on or be-
 10 fore the date prescribed by section 6075(b) for such
 11 transfer or is deemed to be made under section 2632
 12 (b)(1) or (c)(1)—

13 “(A) the value of such property for pur-
 14 poses of subsection (a) shall be its value as fi-
 15 nally determined for purposes of chapter 12
 16 (within the meaning of section 2001(f)(2)), or,
 17 in the case of an allocation deemed to have been
 18 made at the close of an estate tax inclusion pe-
 19 riod, its value at the time of the close of the es-
 20 tate tax inclusion period, and

21 “(B) such allocation shall be effective on
 22 and after the date of such transfer, or, in the
 23 case of an allocation deemed to have been made
 24 at the close of an estate tax inclusion period, on
 25 and after the close of such estate tax inclusion
 26 period.”.

1 (b) TRANSFERS AT DEATH.—Subparagraph (A) of
 2 section 2642(b)(2) of such Code is amended to read as
 3 follows:

4 “(A) TRANSFERS AT DEATH.—If property
 5 is transferred as a result of the death of the
 6 transferor, the value of such property for pur-
 7 poses of subsection (a) shall be its value as fi-
 8 nally determined for purposes of chapter 11; ex-
 9 cept that, if the requirements prescribed by the
 10 Secretary respecting allocation of post-death
 11 changes in value are not met, the value of such
 12 property shall be determined as of the time of
 13 the distribution concerned.”.

14 (c) EFFECTIVE DATE.—The amendments made by
 15 this section shall take effect as if included in the amend-
 16 ments made by section 1431 of the Tax Reform Act of
 17 1986.

18 **SEC. 5. RELIEF PROVISIONS.**

19 (a) IN GENERAL.—Section 2642 of the Internal Rev-
 20 enue Code of 1986 is amended by adding at the end the
 21 following new subsection:

22 “(g) RELIEF PROVISIONS.—

23 “(1) RELIEF FOR LATE ELECTIONS.—

24 “(A) IN GENERAL.—The Secretary shall by
 25 regulation prescribe such circumstances and

1 procedures under which extensions of time will
2 be granted to make—

3 “(i) an allocation of GST exemption
4 described in paragraph (1) or (2) of sub-
5 section (b), and

6 “(ii) an election under subsection
7 (b)(3) or (c)(5) of section 2632.

8 Such regulations shall include procedures for
9 requesting comparable relief with respect to
10 transfers made before the date of enactment of
11 this paragraph.

12 “(B) BASIS FOR DETERMINATIONS.—In
13 determining whether to grant relief under this
14 paragraph, the Secretary shall take into ac-
15 count all relevant circumstances, including evi-
16 dence of intent contained in the trust instru-
17 ment or instrument of transfer and such other
18 factors as the Secretary deems relevant. For
19 purposes of determining whether to grant relief
20 under this paragraph, the time for making the
21 allocation (or election) shall be treated as if not
22 expressly prescribed by statute.

23 “(2) SUBSTANTIAL COMPLIANCE.—An alloca-
24 tion of GST exemption under section 2632 that
25 demonstrates an intent to have a zero inclusion ratio

1 with respect to a transfer or a trust shall be deemed
2 to be an allocation of so much of the transferor's un-
3 used GST exemption as produces, to the extent pos-
4 sible, a zero inclusion ratio. In determining whether
5 there has been substantial compliance, all relevant
6 circumstances shall be taken into account, including
7 evidence of intent contained in the trust instrument
8 or instrument of transfer and such other factors as
9 the Secretary deems relevant.”.

10 (b) EFFECTIVE DATES.—

11 (1) RELIEF FOR LATE ELECTIONS.—Section
12 2642(g)(1) of the Internal Revenue Code of 1986
13 (as added by subsection (a)) shall apply to requests
14 pending on, or filed after, the date of the enactment
15 of this Act.

16 (2) SUBSTANTIAL COMPLIANCE.—Section
17 2642(g)(2) of such Code (as so added) shall take ef-
18 fect on the date of the enactment of this Act and
19 shall apply to allocations made prior to such date for
20 purposes of determining the tax consequences of
21 generation-skipping transfers with respect to which
22 the period of time for filing claims for refund has
23 not expired. No negative implication is intended with
24 respect to the availability of relief for late elections

- 1 or the application of a rule of substantial compliance
- 2 prior to the enactment of this amendment.

