

107TH CONGRESS  
2D SESSION

# H. R. 5008

To amend the Internal Revenue Code of 1986 to limit the applicability of the estate tax to estates of over \$3,500,000, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 2002

Mr. POMEROY introduced the following bill; which was referred to the Committee on Ways and Means

---

## A BILL

To amend the Internal Revenue Code of 1986 to limit the applicability of the estate tax to estates of over \$3,500,000, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. REPEAL OF CARRYOVER BASIS; ETC.**

4       (a) IN GENERAL.—Subtitles A and E of title V of  
5       the Economic Growth and Tax Relief Reconciliation Act  
6       of 2001, and the amendments made by such subtitles, are  
7       hereby repealed; and the Internal Revenue Code of 1986  
8       shall be applied as if such subtitles, and amendments, had  
9       never been enacted.

10       (b) SUNSET NOT TO APPLY.—

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

7           (2) Subsection (b) of such section 901 is  
8       amended by striking “, estates, gifts, and transfers”.

9       (c) CONFORMING AMENDMENTS.—Subsections (d)  
10   and (e) of section 511 of the Economic Growth and Tax  
11   Relief Reconciliation Act of 2001, and the amendments  
12   made by such subsections, are hereby repealed; and the  
13   Internal Revenue Code of 1986 shall be applied as if such  
14   subsections, and amendments, had never been enacted.

15   **SEC. 2. MODIFICATIONS TO ESTATE TAX.**

16       (a) INCREASE IN EXCLUSION EQUIVALENT OF UNI-  
17   FIED CREDIT TO \$3,500,000.—

18           (1) IN GENERAL.—Subsection (c) of section  
19       2010 of the Internal Revenue Code of 1986 (relating  
20       to applicable credit amount) is amended by striking  
21       all that follows “the applicable exclusion amount”  
22       and inserting “. For purposes of the preceding sen-  
23       tence, the applicable exclusion amount is \$3,500,000  
24       (\$3,000,000 in the case of estates of decedents

1 dying, and gifts made, after December 31, 2002,  
2 and before January 1, 2009).”.

3 (2) EARLIER TERMINATION OF SECTION 2057.—  
4 Subsection (f) of section 2057 of such Code is  
5 amended by striking “December 31, 2003” and in-  
6 serting “December 31, 2002”.

7 (b) MAXIMUM ESTATE TAX RATE TO REMAIN AT 50  
8 PERCENT; PHASEOUT OF GRADUATED RATES AND UNI-  
9 FIED CREDIT.—Paragraph (2) of section 2001(c) of such  
10 Code is amended to read as follows:

11 “(2) PHASEOUT OF GRADUATED RATES AND  
12 UNIFIED CREDIT.—The tentative tax determined  
13 under paragraph (1) shall be increased by an  
14 amount equal to 5 percent of so much of the amount  
15 (with respect to which the tentative tax is to be com-  
16 puted) as exceeds \$10,000,000. The amount of the  
17 increase under the preceding sentence shall not ex-  
18 ceed the sum of the applicable credit amount under  
19 section 2010(c) and \$224,200.”

20 (c) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply to estates of decedents dying, and  
22 gifts made, after December 31, 2002.

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

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

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

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

16 “(A) the value of any nonbusiness assets  
 17 held by the entity shall be determined as if the  
 18 transferor had transferred such assets directly  
 19 to the transferee (and no valuation discount  
 20 shall be allowed with respect to such nonbusi-  
 21 ness assets), and

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

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

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

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

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

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

21           For purposes of clause (ii), material participa-  
22           tion shall be determined under the rules of sec-  
23           tion 469(h), except that section 469(h)(3) shall  
24           be applied without regard to the limitation to  
25           farming activity.

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

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

9           “(A) cash or cash equivalents,

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

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

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

18           “(E) annuity,

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

22           “(G) asset (other than a patent, trade-  
23           mark, or copyright) which produces royalty in-  
24           come,

25           “(H) commodity,

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

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

5 “(4) LOOK-THRU RULES.—

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

15 “(B) 10-PERCENT INTEREST.—The term  
16 ‘10-percent interest’ means—

17 “(i) in the case of an interest in a cor-  
18 poration, ownership of at least 10 percent  
19 (by vote or value) of the stock in such cor-  
20 poration,

21 “(ii) in the case of an interest in a  
22 partnership, ownership of at least 10 per-  
23 cent of the capital or profits interest in the  
24 partnership, and

1 “(iii) in any other case, ownership of  
2 at least 10 percent of the beneficial inter-  
3 ests in the entity.

4 “(5) COORDINATION WITH SUBSECTION (b).—  
5 Subsection (b) shall apply after the application of  
6 this subsection.

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

16 (b) EFFECTIVE DATE.—The amendments made by  
17 this section shall apply to transfers after the date of the  
18 enactment of this Act.

○