

111TH CONGRESS
1ST SESSION

S. 1605

To amend the Internal Revenue Code of 1986 to reform the rules relating to fractional charitable donations of tangible personal property.

IN THE SENATE OF THE UNITED STATES

AUGUST 6, 2009

Mr. SCHUMER (for himself, Mr. ISAKSON, Mr. KERRY, and Mr. UDALL of New Mexico) 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 reform the rules relating to fractional charitable donations of tangible personal property.

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. MODIFICATIONS TO RULES FOR FRACTIONAL**
4 **GIFTS.**

5 (a) INCOME TAX.—

6 (1) ADDITIONAL REQUIREMENTS FOR DEDUC-
7 TION.—Paragraph (1) of section 170(o) of the Inter-
8 nal Revenue Code of 1986 is amended to read as fol-
9 lows:

1 “(1) DENIAL OF DEDUCTION IN CERTAIN
2 CASES.—

3 “(A) IN GENERAL.—No deduction shall be
4 allowed for a contribution of an undivided por-
5 tion of a taxpayer’s entire interest in tangible
6 personal property unless—

7 “(i) all interests in the property are
8 held immediately before such contribution
9 by—

10 “(I) the taxpayer, or

11 “(II) the taxpayer and the donee,

12 “(ii) in the case of an initial fractional
13 contribution, such contribution is an undi-
14 vided portion of not less than 10 percent
15 of all interests in the property,

16 “(iii) in the case of an initial frac-
17 tional contribution, the contribution is
18 made pursuant to a written binding con-
19 tract which requires the donor—

20 “(I) to contribute not less than
21 20 percent of all interests in the prop-
22 erty on or before the date that is 11
23 years after the date of the initial frac-
24 tional contribution, and

1 “(II) to contribute all of the in-
2 terests in such property to the donee
3 (or if such donee is no longer in exist-
4 ence, to any person described in sub-
5 section (c)) on or before the earlier of
6 the date of the death of the donor or
7 the date which is 20 years after the
8 date of the initial fractional contribu-
9 tion, and

10 “(iv) if the value of the tangible per-
11 sonal property with respect to which the
12 undivided portion of the taxpayer’s entire
13 interest relates is greater than \$1,000,000
14 (or such greater amount as determined by
15 the Secretary), the taxpayer attaches to
16 the return for the taxable year in which
17 such contribution is made a statement of
18 value obtained from the Internal Revenue
19 Service.

20 “(B) EXCEPTIONS.—The Secretary may,
21 by regulation, provide for exceptions to sub-
22 paragraph (A)(i) in cases where all persons who
23 hold an interest in the property make propor-
24 tional contributions of an undivided portion of
25 the entire interest held by such persons. Such

1 regulations may modify the requirements of
 2 clauses (ii) and (iii) of subparagraph (A) to the
 3 extent necessary to carry out the purposes of
 4 this subparagraph.”.

5 (2) VALUATION OF SUBSEQUENT GIFTS.—Para-
 6 graph (2) of section 170(o) of such Code is amended
 7 to read as follows:

8 “(2) VALUATION OF SUBSEQUENT GIFTS.—In
 9 the case of any additional contribution, the fair mar-
 10 ket value of such contribution shall be determined by
 11 multiplying—

12 “(A) the fair market value of all of the do-
 13 nor’s interest in the property immediately be-
 14 fore the additional contribution, and

15 “(B) the interest in the property (ex-
 16 pressed as a percentage) contributed in such
 17 additional contribution.”.

18 (3) RECAPTURE OF DEDUCTION.—Paragraph
 19 (3) of section 170(o) of such Code is amended—

20 (A) by redesignating subparagraph (B) as
 21 subparagraph (C), and

22 (B) by striking subparagraph (A) and in-
 23 serting the following:

24 “(A) RECAPTURE.—The Secretary shall
 25 provide for the recapture of the amount of any

1 deduction allowed under this section (plus inter-
2 est) with respect to any contribution of an undi-
3 vided portion of a taxpayer's entire interest in
4 tangible personal property—

5 “(i) in any case in which the donor
6 fails to meet the requirements described in
7 paragraph (1)(A)(iii), and

8 “(ii) in any case where such property
9 is not in the physical possession of the
10 donee and used in a use which is related
11 to a purpose or function constituting the
12 basis for the donee organization's exemp-
13 tion under section 501 during any applica-
14 ble period for a period of time which bears
15 substantially the same ratio to 5 years
16 as—

17 “(I) the percentage of the undi-
18 vided interest of the donee in the
19 property (determined on the day after
20 such contribution was made), bears to

21 “(II) 100 percent.

22 “(B) APPLICABLE PERIOD.—For purposes
23 of subparagraph (A), the applicable period
24 means—

1 “(i) the 5-year period beginning on
 2 the date of the later of the initial fractional
 3 contribution, and

4 “(ii) each subsequent 5-year period
 5 occurring during the 20-year period de-
 6 scribed in paragraph (1)(A)(iii)(II).”.

7 (b) ESTATE TAX.—Paragraph (1) of section 2055(g)
 8 of the Internal Revenue Code of 1986 is amended to read
 9 as follows:

10 “(1) VALUATION OF SUBSEQUENT GIFTS.—In
 11 the case of any additional contribution, the fair mar-
 12 ket value of such contribution shall be determined by
 13 multiplying—

14 “(A) the fair market value of all of the do-
 15 nor’s interest in the property immediately be-
 16 fore the additional contribution, and

17 “(B) the interest in the property (ex-
 18 pressed as a percentage) contributed in such
 19 additional contribution.”.

20 (c) GIFT TAX.—

21 (1) ADDITIONAL REQUIREMENTS FOR DEDUC-
 22 TION.—Paragraph (1) of section 2522(e) of the In-
 23 ternal Revenue Code of 1986 is amended to read as
 24 follows:

1 “(1) DENIAL OF DEDUCTION IN CERTAIN
2 CASES.—

3 “(A) IN GENERAL.—No deduction shall be
4 allowed for a contribution of an undivided por-
5 tion of a taxpayer’s entire interest in tangible
6 personal property unless—

7 “(i) all interests in the property are
8 held immediately before such contribution
9 by—

10 “(I) the taxpayer, or

11 “(II) the taxpayer and the donee,

12 “(ii) in the case of an initial fractional
13 contribution, such contribution is an undi-
14 vided portion of not less than 10 percent
15 of all interests in the property,

16 “(iii) in the case of an initial frac-
17 tional contribution, the contribution is
18 made pursuant to a written binding con-
19 tract which requires the donor—

20 “(I) to contribute not less than
21 20 percent of all interests in the prop-
22 erty on or before the date that is 11
23 years after the date of the initial frac-
24 tional contribution, and

1 “(II) to contribute all of the in-
2 terests in such property to the donee
3 (or if such donee is no longer in exist-
4 ence, to any person described in sec-
5 tion 170(c)) on or before the earlier of
6 the date of the death of the donor or
7 the date which is 20 years after the
8 date of the initial fractional contribu-
9 tion, and

10 “(iv) if the value of the tangible per-
11 sonal property with respect to which the
12 undivided portion of the taxpayer’s entire
13 interest relates is greater than \$1,000,000
14 (or such greater amount as determined by
15 the Secretary), the taxpayer attaches to
16 the return for the taxable year in which
17 such contribution is made a statement of
18 value obtained from the Internal Revenue
19 Service.

20 “(B) EXCEPTIONS.—The Secretary may,
21 by regulation, provide for exceptions to sub-
22 paragraph (A)(i) in cases where all persons who
23 hold an interest in the property make propor-
24 tional contributions of an undivided portion of
25 the entire interest held by such persons. Such

1 regulations may modify the requirements of
 2 clauses (ii) and (iii) of subparagraph (A) to the
 3 extent necessary to carry out the purposes of
 4 this subparagraph.”.

5 (2) VALUATION OF SUBSEQUENT GIFTS.—Para-
 6 graph (2) of section 2522(e) of such Code is amend-
 7 ed to read as follows:

8 “(2) VALUATION OF SUBSEQUENT GIFTS.—In
 9 the case of any additional contribution, the fair mar-
 10 ket value of such contribution shall be determined by
 11 multiplying—

12 “(A) the fair market value of all of the do-
 13 nor’s interest in the property immediately be-
 14 fore the additional contribution, and

15 “(B) the interest in the property (ex-
 16 pressed as a percentage) contributed in such
 17 additional contribution.”.

18 (3) RECAPTURE OF DEDUCTION.—Paragraph
 19 (3) of section 2522(e) of such Code is amended—

20 (A) by redesignating subparagraph (B) as
 21 subparagraph (C), and

22 (B) by striking subparagraph (A) and in-
 23 serting the following:

24 “(A) RECAPTURE.—The Secretary shall
 25 provide for the recapture of the amount of any

1 deduction allowed under this section (plus inter-
2 est) with respect to any contribution of an undi-
3 vided portion of a taxpayer's entire interest in
4 tangible personal property—

5 “(i) in any case in which the donor
6 fails to meet the requirements described in
7 paragraph (1)(A)(iii), and

8 “(ii) in any case where such property
9 is not in the physical possession of the
10 donee and used in a use which is related
11 to a purpose or function constituting the
12 basis for the donee organization's exemp-
13 tion under section 501 during any applica-
14 ble period for a period of time which bears
15 substantially the same ratio to 5 years
16 as—

17 “(I) the percentage of the undi-
18 vided interest of the donee in the
19 property (determined on the day after
20 such contribution was made), bears to

21 “(II) 100 percent.

22 “(B) APPLICABLE PERIOD.—For purposes
23 of subparagraph (A), the applicable period
24 means—

1 “(i) the 5-year period beginning on
 2 the date of the later of the initial fractional
 3 contribution, and

4 “(ii) each subsequent 5-year period
 5 occurring during the 20-year period de-
 6 scribed in paragraph (1)(A)(iii)(II).”.

7 (d) RETURN REQUIREMENT.—Section 6033 of the
 8 Internal Revenue Code of 1986 is amended by redesign-
 9 nating subsection (m) as subsection (n) and by inserting
 10 after subsection (l) the following new subsection:

11 “(m) ADDITIONAL PROVISIONS RELATING TO ORGA-
 12 NIZATIONS DESCRIBED IN SECTION 170(c).—Every orga-
 13 nization described in section 170(c) shall, on any return
 14 required under subsection (a), list each charitable con-
 15 tribution received by the organization during the period
 16 covered by the return which represents a contribution of
 17 an undivided portion of a taxpayer’s entire interest in tan-
 18 gible personal property and provide such other information
 19 with respect to such contribution as required by the Sec-
 20 retary.”.

21 (e) EFFECTIVE DATE.—

22 (1) IN GENERAL.—Except as provided in para-
 23 graph (2), the amendments made by this section
 24 shall apply to contributions, bequests, and gifts
 25 made after the date of the enactment of this Act.

1 (2) RETURN REQUIREMENT.—The amendments
 2 made by subsection (d) shall apply to returns for
 3 taxable years ending after the date of the enactment
 4 of this Act.

5 (f) TRANSITION RULE.—In the case of any additional
 6 contribution (as defined in section 170(o)(4) of the Inter-
 7 nal Revenue Code of 1986) with respect to an initial frac-
 8 tional contribution (as defined in such section) made after
 9 August 17, 2006, and before the date of the enactment
 10 of this Act—

11 (1) except for purposes of determining the fair
 12 market value of such contribution under sections
 13 170(o)(2), 2055(g)(1), and 2522(e)(2) of the Inter-
 14 nal Revenue Code of 1986 (as such sections were
 15 amended by this Act), such contribution shall be
 16 treated as an initial fractional contribution (as so
 17 defined) subject to the amendments made by this
 18 section, and

19 (2) sections 170(o)(3)(A)(i) and
 20 2522(e)(3)(A)(i) of such Code (as in effect before
 21 the date of the enactment of this Act) shall not
 22 apply with respect to any prior contribution of an
 23 undivided portion of the taxpayer's interest in the
 24 property.

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