

Calendar No. 562

111TH CONGRESS
2D SESSION

S. 3773

To permanently extend the 2001 and 2003 tax relief provisions and to provide permanent AMT relief and estate tax relief, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 13, 2010

Mr. McCONNELL (for himself, Mr. GRASSLEY, Mr. KYL, Mr. McCAIN, Mr. COCHRAN, Mr. GRAHAM, Mr. ROBERTS, Mr. CORNYN, Mr. INHOFE, Mr. ENSIGN, Mr. ISAKSON, Mr. BROWNBACK, Mr. ENZI, Mr. CRAPO, Mr. BURR, Mr. VITTER, Mr. WICKER, Mr. CHAMBLISS, Mr. BOND, Mrs. HUTCHISON, Mr. HATCH, Mr. BENNETT, Mr. RISCH, and Mr. SHELBY) introduced the following bill; which was read the first time

SEPTEMBER 14, 2010

Read the second time and placed on the calendar

A BILL

To permanently extend the 2001 and 2003 tax relief provisions and to provide permanent AMT relief and estate tax relief, 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. SHORT TITLE.**

4 This Act may be cited as the “Tax Hike Prevention
5 Act of 2010”.

TITLE I—PERMANENT TAX RELIEF

SEC. 101. 2001 TAX RELIEF MADE PERMANENT.

Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 is repealed.

SEC. 102. 2003 TAX RELIEF MADE PERMANENT.

Section 303 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 is repealed.

SEC. 103. TECHNICAL AND CONFORMING AMENDMENTS.

The Secretary of the Treasury or the Secretary's delegate shall not later than 90 days after the date of the enactment of this Act, submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a draft of any technical and conforming changes in the Internal Revenue Code of 1986 which are necessary to reflect throughout such Code the purposes of the provisions of, and amendments made by, this Act.

TITLE II—PERMANENT INDIVIDUAL AMT RELIEF

SEC. 201. PERMANENT INDIVIDUAL AMT RELIEF.

(a) MODIFICATION OF ALTERNATIVE MINIMUM TAX EXEMPTION AMOUNT.—

(1) IN GENERAL.—Paragraph (1) of section 55(d) of the Internal Revenue Code of 1986 (relat-

1 ing to exemption amount) is amended to read as fol-
2 lows:

3 “(1) EXEMPTION AMOUNT FOR TAXPAYERS
4 OTHER THAN CORPORATIONS.—In the case of a tax-
5 payer other than a corporation, the term ‘exemption
6 amount’ means—

7 “(A) the dollar amount for taxable years
8 beginning in the calendar year as specified in
9 the table contained in paragraph (4)(A) in the
10 case of—

11 “(i) a joint return, or

12 “(ii) a surviving spouse,

13 “(B) the dollar amount for taxable years
14 beginning in the calendar year as specified in
15 the table contained in paragraph (4)(B) in the
16 case of an individual who—

17 “(i) is not a married individual, and

18 “(ii) is not a surviving spouse,

19 “(C) 50 percent of the dollar amount ap-
20 plicable under paragraph (1)(A) in the case of
21 a married individual who files a separate re-
22 turn, and

23 “(D) \$22,500 in the case of an estate or
24 trust.

1 For purposes of this paragraph, the term ‘surviving
 2 spouse’ has the meaning given to such term by sec-
 3 tion 2(a), and marital status shall be determined
 4 under section 7703.’’.

5 (2) SPECIFIED EXEMPTION AMOUNTS.—Section
 6 55(d) of such Code is amended by adding at the end
 7 the following new paragraph:

8 “(4) SPECIFIED EXEMPTION AMOUNTS.—

9 “(A) TAXPAYERS DESCRIBED IN PARA-
 10 GRAPH (1)(A).—For purposes of paragraph
 11 (1))(A)—

“For taxable years beginning in—	The exemp- tion amount is:
2010	\$72,450
2011	\$74,450
2012	\$78,250
2013	\$81,450
2014	\$85,050
2015	\$88,650
2016	\$92,650
2017	\$96,550
2018	\$100,950
2019	\$105,150
2020	\$109,950.

12 “(B) TAXPAYERS DESCRIBED IN PARA-
 13 GRAPH (1)(B).—For purposes of paragraph
 14 (1))(B)—

“For taxable years beginning in—	The exemp- tion amount is:
2010	\$47,450
2011	\$48,450
2012	\$50,350

“For taxable years beginning in—	The exemp- tion amount is:
2013	\$51,950
2014	\$53,750
2015	\$55,550
2016	\$57,550
2017	\$59,500
2018	\$61,700
2019	\$63,800
2020	\$66,200.”.

1 (b) ALTERNATIVE MINIMUM TAX RELIEF FOR NON-
2 REFUNDABLE CREDITS.—

3 (1) IN GENERAL.—Subsection (a) of section 26
4 of the Internal Revenue Code of 1986 is amended to
5 read as follows:

6 “(a) LIMITATION BASED ON AMOUNT OF TAX.—The
7 aggregate amount of credits allowed by this subpart for
8 the taxable year shall not exceed the sum of—

9 “(1) the taxpayer’s regular tax liability for the
10 taxable year reduced by the foreign tax credit allow-
11 able under section 27(a), and

12 “(2) the tax imposed by section 55(a) for the
13 taxable year.”.

14 (2) CONFORMING AMENDMENTS.—

15 (A) ADOPTION CREDIT.—

16 (i) Section 23(b) of such Code is
17 amended by striking paragraph (4).

1 (ii) Section 23(c) of such Code is
 2 amended by striking paragraphs (1) and
 3 (2) and inserting the following:

4 “(1) IN GENERAL.—If the credit allowable
 5 under subsection (a) for any taxable year exceeds
 6 the limitation imposed by section 26(a) for such tax-
 7 able year reduced by the sum of the credits allowable
 8 under this subpart (other than this section and sec-
 9 tions 25D and 1400C), such excess shall be carried
 10 to the succeeding taxable year and added to the
 11 credit allowable under subsection (a) for such tax-
 12 able year.”.

13 (iii) Section 23(c) of such Code is
 14 amended by redesignating paragraph (3)
 15 as paragraph (2).

16 (B) CHILD TAX CREDIT.—

17 (i) Section 24(b) of such Code is
 18 amended by striking paragraph (3).

19 (ii) Section 24(d)(1) of such Code is
 20 amended—

21 (I) by striking “section 26(a)(2)
 22 or subsection (b)(3), as the case may
 23 be,” each place it appears in subpara-
 24 graphs (A) and (B) and inserting
 25 “section 26(a)”, and

1 (II) by striking “section 26(a)(2)
 2 or subsection (b)(3), as the case may
 3 be” in the second last sentence and
 4 inserting “section 26(a)”.

5 (C) CREDIT FOR INTEREST ON CERTAIN
 6 HOME MORTGAGES.—Section 25(e)(1)(C) of
 7 such Code is amended to read as follows:

8 “(C) APPLICABLE TAX LIMIT.—For pur-
 9 poses of this paragraph, the term ‘applicable
 10 tax limit’ means the limitation imposed by sec-
 11 tion 26(a) for the taxable year reduced by the
 12 sum of the credits allowable under this subpart
 13 (other than this section and sections 23, 25D,
 14 and 1400C).”.

15 (D) SAVERS’ CREDIT.—Section 25B of
 16 such Code is amended by striking subsection
 17 (g).

18 (E) RESIDENTIAL ENERGY EFFICIENT
 19 PROPERTY.—Section 25D(c) of such Code is
 20 amended to read as follows:

21 “(c) CARRYFORWARD OF UNUSED CREDIT.—If the
 22 credit allowable under subsection (a) exceeds the limita-
 23 tion imposed by section 26(a) for such taxable year re-
 24 duced by the sum of the credits allowable under this sub-
 25 part (other than this section), such excess shall be carried

1 to the succeeding taxable year and added to the credit al-
 2 lowable under subsection (a) for such succeeding taxable
 3 year.”.

4 (F) CERTAIN PLUG-IN ELECTRIC VEHI-
 5 CLES.—Section 30(c)(2) of such Code is
 6 amended to read as follows:

7 “(2) PERSONAL CREDIT.—For purposes of this
 8 title, the credit allowed under subsection (a) for any
 9 taxable year (determined after application of para-
 10 graph (1)) shall be treated as a credit allowable
 11 under subpart A for such taxable year.”.

12 (G) ALTERNATIVE MOTOR VEHICLE CRED-
 13 IT.—Section 30B(g)(2) of such Code is amend-
 14 ed to read as follows:

15 “(2) PERSONAL CREDIT.—For purposes of this
 16 title, the credit allowed under subsection (a) for any
 17 taxable year (determined after application of para-
 18 graph (1)) shall be treated as a credit allowable
 19 under subpart A for such taxable year.”.

20 (H) NEW QUALIFIED PLUG-IN ELECTRIC
 21 VEHICLE CREDIT.—Section 30D(c)(2) of such
 22 Code is amended to read as follows:

23 “(2) PERSONAL CREDIT.—For purposes of this
 24 title, the credit allowed under subsection (a) for any
 25 taxable year (determined after application of para-

1 graph (1)) shall be treated as a credit allowable
 2 under subpart A for such taxable year.”.

3 (I) CROSS REFERENCES.—Section 55(c)(3)
 4 of such Code is amended by striking “26(a),
 5 30C(d)(2),” and inserting “30C(d)(2)”.

6 (J) FOREIGN TAX CREDIT.—Section 904 of
 7 such Code is amended by striking subsection (i)
 8 and by redesignating subsections (j) , (k), and
 9 (l) as subsections (i), (j), and (k), respectively.

10 (K) FIRST-TIME HOME BUYER CREDIT FOR
 11 THE DISTRICT OF COLUMBIA.—Section
 12 1400C(d) of such Code is amended to read as
 13 follows:

14 “(d) CARRYFORWARD OF UNUSED CREDIT.—If the
 15 credit allowable under subsection (a) exceeds the limita-
 16 tion imposed by section 26(a) for such taxable year re-
 17 duced by the sum of the credits allowable under subpart
 18 A of part IV of subchapter A (other than this section and
 19 section 25D), such excess shall be carried to the suc-
 20 ceeding taxable year and added to the credit allowable
 21 under subsection (a) for such taxable year.”.

22 (c) EFFECTIVE DATE.—The amendments made by
 23 this section shall apply to taxable years beginning after
 24 December 31, 2009.

1 **TITLE III—PERMANENT ESTATE**
2 **TAX RELIEF**

3 **SEC. 301. APPLICATION OF ESTATE, GENERATION-SKIP-**
4 **PING TRANSFER, AND GIFT TAXES AFTER**
5 **2009.**

6 (a) IN GENERAL.—The following provisions of the
7 Economic Growth and Tax Relief Reconciliation Act of
8 2001, and the amendments made by such provisions, are
9 repealed on and after January 1, 2010, with respect to
10 decedents dying on and after such date, and on and after
11 January 1, 2011, with respect to gifts made and genera-
12 tion-skipping transfers on and after such date:

13 (1) Subtitles A and E of title V.

14 (2) Subsection (d), and so much of subsection
15 (f)(3) as relates to subsection (d), of section 511.

16 (3) Paragraph (2) of subsection (b), and para-
17 graph (2) of subsection (e), of section 521.

18 Except in the case of an election under section 404, the
19 Internal Revenue Code of 1986 shall be applied as if such
20 provisions and amendments had never been enacted.

21 (b) CONFORMING AMENDMENT.—Subsection (c) of
22 section 2511 of the Internal Revenue Code of 1986 is re-
23 pealed on and after January 1, 2011, with respect to gifts
24 made on and after such date.

1 **SEC. 302. TREATMENT OF UNIFIED CREDIT AND MAXIMUM**
2 **ESTATE TAX RATE AFTER 2009.**

3 (a) RESTORATION OF UNIFIED CREDIT AGAINST
4 GIFT TAX.—Paragraph (1) of section 2505(a) of the In-
5 ternal Revenue Code of 1986 (relating to general rule for
6 unified credit against gift tax), after the application of sec-
7 tion __01, is amended by striking “(determined as if the
8 applicable exclusion amount were \$1,000,000)”.

9 (b) EXCLUSION EQUIVALENT OF UNIFIED CREDIT
10 EQUAL TO \$5,000,000.—Subsection (c) of section 2010
11 of the Internal Revenue Code of 1986 (relating to unified
12 credit against estate tax) is amended to read as follows:

13 “(c) APPLICABLE CREDIT AMOUNT.—

14 “(1) IN GENERAL.—For purposes of this sec-
15 tion, the applicable credit amount is the amount of
16 the tentative tax which would be determined under
17 section 2001(c) if the amount with respect to which
18 such tentative tax is to be computed were equal to
19 the applicable exclusion amount.

20 “(2) APPLICABLE EXCLUSION AMOUNT.—

21 “(A) IN GENERAL.—For purposes of this
22 subsection, the applicable exclusion amount is
23 \$5,000,000.

24 “(B) INFLATION ADJUSTMENT.—In the
25 case of any decedent dying in a calendar year

1 after 2010, the dollar amount in subparagraph
 2 (A) shall be increased by an amount equal to—
 3 “(i) such dollar amount, multiplied by
 4 “(ii) the cost-of-living adjustment de-
 5 termined under section 1(f)(3) for such
 6 calendar year by substituting ‘calendar
 7 year 2009’ for ‘calendar year 1992’ in sub-
 8 paragraph (B) thereof.

9 If any amount as adjusted under the preceding
 10 sentence is not a multiple of \$10,000, such
 11 amount shall be rounded to the nearest multiple
 12 of \$10,000.”.

13 (c) MAXIMUM ESTATE TAX RATE EQUAL TO 35 PER-
 14 CENT.—

15 (1) IN GENERAL.—Subsection (c) of section
 16 2001 of the Internal Revenue Code of 1986 (relating
 17 to imposition and rate of tax) is amended—

18 (A) by striking “Over \$500,000” and all
 19 that follows in the table contained in paragraph
 20 (1) and insert the following:

“Over \$500,000 \$79,300, plus 35 percent of the excess
 of such amount over \$500,000.”,

21 (B) by striking “(1) IN GENERAL.—”, and
 22 (C) by striking paragraph (2).

1 (2) CONFORMING AMENDMENT.—Paragraphs
 2 (1) and (2) of section 2102(b) of such Code are
 3 amended to read as follows:

4 “(1) IN GENERAL.—A credit in an amount that
 5 would be determined under section 2010 as the ap-
 6 plicable credit amount if the applicable exclusion
 7 amount were \$60,000 shall be allowed against the
 8 tax imposed by section 2101.

9 “(2) RESIDENTS OF POSSESSIONS OF THE
 10 UNITED STATES.—In the case of a decedent who is
 11 considered to be a ‘nonresident not a citizen of the
 12 United States’ under section 2209, the credit al-
 13 lowed under this subsection shall not be less than
 14 the proportion of the amount that would be deter-
 15 mined under section 2010 as the applicable credit
 16 amount if the applicable exclusion amount were
 17 \$175,000 which the value of that part of the dece-
 18 dent’s gross estate which at the time of the dece-
 19 dent’s death is situated in the United States bears
 20 to the value of the decedent’s entire gross estate,
 21 wherever situated.”.

22 (d) MODIFICATIONS OF ESTATE AND GIFT TAXES TO
 23 REFLECT DIFFERENCES IN UNIFIED CREDIT RESULTING
 24 FROM DIFFERENT TAX RATES.—

25 (1) ESTATE TAX.—

1 (A) IN GENERAL.—Section 2001(b)(2) of
 2 the Internal Revenue Code of 1986 (relating to
 3 computation of tax) is amended by striking “if
 4 the provisions of subsection (c) (as in effect at
 5 the decedent’s death)” and inserting “if the
 6 modifications described in subsection (g)”.

7 (B) MODIFICATIONS.—Section 2001 of
 8 such Code is amended by adding at the end the
 9 following new subsection:

10 “(g) MODIFICATIONS TO GIFT TAX PAYABLE TO RE-
 11 FLECT DIFFERENT TAX RATES.—For purposes of apply-
 12 ing subsection (b)(2) with respect to 1 or more gifts, the
 13 rates of tax under subsection (c) in effect at the decedent’s
 14 death shall, in lieu of the rates of tax in effect at the time
 15 of such gifts, be used both to compute—

16 “(1) the tax imposed by chapter 12 with respect
 17 to such gifts, and

18 “(2) the credit allowed against such tax under
 19 section 2505, including in computing—

20 “(A) the applicable credit amount under
 21 section 2505(a)(1), and

22 “(B) the sum of the amounts allowed as a
 23 credit for all preceding periods under section
 24 2505(a)(2).

1 For purposes of paragraph (2)(A), the applicable
 2 credit amount for any calendar year before 1998 is
 3 the amount which would be determined under sec-
 4 tion 2010(c) if the applicable exclusion amount were
 5 the dollar amount under section 6018(a)(1) for such
 6 year.”.

7 (2) GIFT TAX.—Section 2505(a) of such Code
 8 (relating to unified credit against gift tax) is amend-
 9 ed by adding at the end the following new flush sen-
 10 tence:

11 “For purposes of applying paragraph (2) for any calendar
 12 year, the rates of tax in effect under section 2502(a)(2)
 13 for such calendar year shall, in lieu of the rates of tax
 14 in effect for preceding calendar periods, be used in deter-
 15 mining the amounts allowable as a credit under this sec-
 16 tion for all preceding calendar periods.”.

17 (e) EFFECTIVE DATE.—The amendments made by
 18 this section shall apply to estates of decedents dying, gen-
 19 eration-skipping transfers, and gifts made, after Decem-
 20 ber 31, 2009.

21 **SEC. 303. UNIFIED CREDIT INCREASED BY UNUSED UNI-**
 22 **FIED CREDIT OF DECEASED SPOUSE.**

23 (a) IN GENERAL.—Section 2010(c) of the Internal
 24 Revenue Code of 1986, as amended by section 302(b), is

1 amended by striking paragraph (2) and inserting the fol-
 2 lowing new paragraphs:

3 “(2) APPLICABLE EXCLUSION AMOUNT.—For
 4 purposes of this subsection, the applicable exclusion
 5 amount is the sum of—

6 “(A) the basic exclusion amount, and

7 “(B) in the case of a surviving spouse, the
 8 aggregate deceased spousal unused exclusion
 9 amount.

10 “(3) BASIC EXCLUSION AMOUNT.—

11 “(A) IN GENERAL.—For purposes of this
 12 subsection, the basic exclusion amount is
 13 \$5,000,000.

14 “(B) INFLATION ADJUSTMENT.—In the
 15 case of any decedent dying in a calendar year
 16 after 2010, the dollar amount in subparagraph
 17 (A) shall be increased by an amount equal to—

18 “(i) such dollar amount, multiplied by

19 “(ii) the cost-of-living adjustment de-
 20 termined under section 1(f)(3) for such
 21 calendar year by substituting ‘calendar
 22 year 2009’ for ‘calendar year 1992’ in sub-
 23 paragraph (B) thereof.

24 If any amount as adjusted under the preceding
 25 sentence is not a multiple of \$10,000, such

1 amount shall be rounded to the nearest multiple
2 of \$10,000.

3 “(4) AGGREGATE DECEASED SPOUSAL UNUSED
4 EXCLUSION AMOUNT.—For purposes of this sub-
5 section, the term ‘aggregate deceased spousal unused
6 exclusion amount’ means the lesser of—

7 “(A) the basic exclusion amount, or

8 “(B) the sum of the deceased spousal un-
9 used exclusion amounts computed with respect
10 to each deceased spouse of the surviving spouse.

11 “(5) DECEASED SPOUSAL UNUSED EXCLUSION
12 AMOUNT.—For purposes of this subsection, the term
13 ‘deceased spousal unused exclusion amount’ means,
14 with respect to the surviving spouse of any deceased
15 spouse dying after December 31, 2009, the excess (if
16 any) of—

17 “(A) the basic exclusion amount of the de-
18 ceased spouse, over

19 “(B) the amount with respect to which the
20 tentative tax is determined under section
21 2001(b)(1) on the estate of such deceased
22 spouse.

23 “(6) SPECIAL RULES.—

24 “(A) ELECTION REQUIRED.—A deceased
25 spousal unused exclusion amount may not be

1 taken into account by a surviving spouse under
2 paragraph (5) unless the executor of the estate
3 of the deceased spouse files an estate tax return
4 on which such amount is computed and makes
5 an election on such return that such amount
6 may be so taken into account. Such election,
7 once made, shall be irrevocable. No election
8 may be made under this subparagraph if such
9 return is filed after the time prescribed by law
10 (including extensions) for filing such return.

11 “(B) EXAMINATION OF PRIOR RETURNS
12 AFTER EXPIRATION OF PERIOD OF LIMITATIONS
13 WITH RESPECT TO DECEASED SPOUSAL UN-
14 USED EXCLUSION AMOUNT.—Notwithstanding
15 any period of limitation in section 6501, after
16 the time has expired under section 6501 within
17 which a tax may be assessed under chapter 11
18 or 12 with respect to a deceased spousal unused
19 exclusion amount, the Secretary may examine a
20 return of the deceased spouse to make deter-
21 minations with respect to such amount for pur-
22 poses of carrying out this subsection.

23 “(7) REGULATIONS.—The Secretary shall pre-
24 scribe such regulations as may be necessary or ap-
25 propriate to carry out this subsection.”.

1 (b) CONFORMING AMENDMENTS.—

2 (1) Paragraph (1) of section 2505(a) of the In-
3 ternal Revenue Code of 1986, as amended by section
4 302(a), is amended to read as follows:

5 “(1) the applicable credit amount in effect
6 under section 2010(c) which would apply if the
7 donor died as of the end of the calendar year, re-
8 duced by”.

9 (2) Section 2631(c) of such Code is amended by
10 striking “the applicable exclusion amount” and in-
11 serting “the basic exclusion amount”.

12 (3) Section 6018(a)(1) of such Code is amended
13 by striking “applicable exclusion amount” and in-
14 serting “basic exclusion amount”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to estates of decedents dying, gen-
17 eration-skipping transfers, and gifts made, after Decem-
18 ber 31, 2009.

19 **SEC. 304. SPECIAL ELECTION FOR DECEDENTS DYING IN**
20 **2010.**

21 In the case of any decedent dying in 2010, the execu-
22 tor of the estate of such decedent may elect to apply the
23 Internal Revenue Code of 1986 without regard to the pro-
24 visions of, and the amendments made by, this title (other
25 than this section). Such election shall be made at such

- 1 time and in such manner as the Secretary of the Treasury
- 2 shall provide.

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11TH CONGRESS
2^D Session

S. 3773

A BILL

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SEPTEMBER 14, 2010

Read the second time and placed on the calendar