

111TH CONGRESS  
1ST SESSION

# H. R. 436

To amend the Internal Revenue Code of 1986 to repeal the new carryover basis rules in order to prevent tax increases and the imposition of compliance burdens on many more estates than would benefit from repeal, to retain the estate tax with a \$3,500,000 exemption, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 2009

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

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## A BILL

To amend the Internal Revenue Code of 1986 to repeal the new carryover basis rules in order to prevent tax increases and the imposition of compliance burdens on many more estates than would benefit from repeal, to retain the estate tax with a \$3,500,000 exemption, 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 “Certain Estate Tax  
5       Relief Act of 2009”.

1 **SEC. 2. RETENTION OF ESTATE TAX; REPEAL OF CARRY-**  
2 **OVER BASIS.**

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6 hereby repealed; and the Internal Revenue Code of 1986  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

9 (b) **SUNSET NOT TO APPLY.**—Section 901 of the  
10 Economic Growth and Tax Relief Reconciliation Act of  
11 2001 shall not apply to title V of such Act.

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15 made by such subsections, are hereby repealed; and the  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

18 **SEC. 3. MODIFICATIONS TO ESTATE TAX.**

19 (a) **\$3,500,000 EXCLUSION EQUIVALENT OF UNI-**  
20 **FIED CREDIT.**—Subsection (c) of section 2010 of the In-  
21 ternal Revenue Code of 1986 (relating to applicable credit  
22 amount) is amended by striking all that follows “the appli-  
23 cable exclusion amount” and inserting “. For purposes of  
24 the preceding sentence, the applicable exclusion amount  
25 is \$3,500,000.”.

1 (b) FREEZE MAXIMUM ESTATE TAX RATE AT 45  
 2 PERCENT; RESTORATION OF PHASEOUT OF GRADUATED  
 3 RATES AND UNIFIED CREDIT.—

4 (1) Paragraph (1) of section 2001(c) of such  
 5 Code is amended by striking the last 2 items in the  
 6 table and inserting the following new item:

“Over \$1,500,000 ..... \$555,800, plus 45 percent of the ex-  
 cess of such amount over  
 \$1,500,000.”.

7 (2) Paragraph (2) of section 2001(c) of such  
 8 Code is amended to read as follows:

9 “(2) PHASEOUT OF GRADUATED RATES AND  
 10 UNIFIED CREDIT.—The tentative tax determined  
 11 under paragraph (1) shall be increased by an  
 12 amount equal to 5 percent of so much of the amount  
 13 (with respect to which the tentative tax is to be com-  
 14 puted) as exceeds \$10,000,000. The amount of the  
 15 increase under the preceding sentence shall not ex-  
 16 ceed the sum of the applicable credit amount under  
 17 section 2010(c) and \$119,200.”.

18 (c) EFFECTIVE DATE.—The amendments made by  
 19 this section shall apply to estates of decedents dying, and  
 20 gifts made, after December 31, 2009.

1 **SEC. 4. 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.

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