

111TH CONGRESS
1ST SESSION

H. R. 498

To make permanent the individual income tax rates for capital gains, and
for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 14, 2009

Mr. MITCHELL (for himself and Mr. KIRK) introduced the following bill; which
was referred to the Committee on Ways and Means

A BILL

To make permanent the individual income tax rates for
capital gains, 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 “Capital Gains and Es-
5 tate Tax Relief Act of 2009”.

6 **SEC. 2. INDIVIDUAL INCOME TAX RATES FOR CAPITAL**
7 **GAINS MADE PERMANENT.**

8 Section 303 of the Jobs and Growth Tax Relief Rec-
9 onciliation Act of 2003 is amended by striking “this title”
10 and inserting “section 302”.

1 **SEC. 3. REFORM AND EXTENSION OF ESTATE TAX AFTER**
2 **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
7 subsection (g), is amended by striking “(determined as if
8 the applicable exclusion amount were \$1,000,000)”.

9 (b) EXCLUSION EQUIVALENT OF UNIFIED CREDIT
10 INCREASED TO \$5,000,000.—Subsection (c) of section
11 2010 of such Code (relating to unified credit against es-
12 tate 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 the rate schedule set forth in section 2001(c) if the
18 amount with respect to which such tentative tax is
19 to be computed were the applicable exclusion
20 amount.

21 “(2) APPLICABLE EXCLUSION AMOUNT.—

22 “(A) IN GENERAL.—For purposes of this
23 subsection, the applicable exclusion amount is
24 as follows:

25 “(i) For calendar year 2010,
26 \$3,750,000.

1 “(ii) For calendar year 2011,
2 \$4,000,000.

3 “(iii) For calendar year 2012,
4 \$4,250,000.

5 “(iv) For calendar year 2013,
6 \$4,500,000.

7 “(v) For calendar year 2014,
8 \$4,750,000.

9 “(vi) For calendar year 2015 and
10 thereafter, \$5,000,000.

11 “(B) INFLATION ADJUSTMENT.—In the
12 case of any decedent dying in a calendar year
13 after 2015, the \$5,000,000 amount in subpara-
14 graph (A)(vi) shall be increased by an amount
15 equal to—

16 “(i) such dollar amount, multiplied by

17 “(ii) the cost-of-living adjustment de-
18 termined under section 1(f)(3) for such
19 calendar year by substituting ‘calendar
20 year 2014’ for ‘calendar year 1992’ in sub-
21 paragraph (B) thereof.

22 If any amount as adjusted under the preceding
23 sentence is not a multiple of \$50,000, such
24 amount shall be rounded to the nearest multiple
25 of \$50,000.”.

1 (c) RATE SCHEDULE.—

2 (1) IN GENERAL.—Subsection (c) of section
3 2001 of such Code (relating to rate schedule) is
4 amended to read as follows:

5 “(c) RATE SCHEDULE.—

6 “(1) IN GENERAL.—The tentative tax is equal
7 to the sum of—

8 “(A) the product of the rate specified in
9 section 1(h)(1)(C) in effect on the date of the
10 decedent’s death multiplied by so much of the
11 sum described in subsection (b)(1) as does not
12 exceed \$25,000,000, and

13 “(B) twice the rate specified in section
14 1(h)(1)(C) in effect on the date of the dece-
15 dent’s death of so much of the sum described
16 in subsection (b)(1) as exceeds \$25,000,000.

17 “(2) INFLATION ADJUSTMENT.—In the case of
18 any decedent dying in a calendar year after 2015,
19 each \$25,000,000 amount in subparagraphs (A) and
20 (B) of paragraph (1) shall be increased by an
21 amount equal to—

22 “(A) such dollar amount, multiplied by

23 “(B) the cost-of-living adjustment deter-
24 mined under section 1(f)(3) for such calendar
25 year by substituting ‘calendar year 2014’ for

1 ‘calendar year 1992’ in subparagraph (B)
2 thereof.

3 If any amount as adjusted under the preceding sen-
4 tence is not a multiple of \$50,000, such amount
5 shall be rounded to the nearest multiple of
6 \$50,000.”.

7 (2) CONFORMING AMENDMENT.—Section
8 2502(a) of such Code (relating to computation of
9 tax), after the application of subsection (g), is
10 amended by adding at the end the following flush
11 sentence:

12 “In computing the tentative tax under section 2001(c) for
13 purposes of this subsection, ‘the last day of the calendar
14 year in which the gift was made’ shall be substituted for
15 ‘the date of the decedent’s death’ each place it appears
16 in such section.”.

17 (d) MODIFICATIONS OF ESTATE AND GIFT TAXES TO
18 REFLECT DIFFERENCES IN UNIFIED CREDIT RESULTING
19 FROM DIFFERENT TAX RATES.—

20 (1) ESTATE TAX.—

21 (A) IN GENERAL.—Section 2001(b)(2) of
22 such Code (relating to computation of tax) is
23 amended by striking “if the provisions of sub-
24 section (c) (as in effect at the decedent’s

1 death)” and inserting “if the modifications de-
2 scribed in subsection (g)”.

3 (B) MODIFICATIONS.—Section 2001 of
4 such Code is amended by adding at the end the
5 following new subsection:

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

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

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

16 “(A) the applicable credit amount under
17 section 2505(a)(1), and

18 “(B) the sum of the amounts allowed as a
19 credit for all preceding periods under section
20 2505(a)(2).

21 For purposes of paragraph (2)(A), the applicable
22 credit amount for any calendar year before 1998 is
23 the amount which would be determined under sec-
24 tion 2010(c) if the applicable exclusion amount were

1 the dollar amount under section 6018(a)(1) for such
2 year.”.

3 (2) GIFT TAX.—Section 2505(a) of such Code
4 (relating to unified credit against gift tax), after the
5 application of subsection (g), is amended by adding
6 at the end the following new flush sentence:
7 “For purposes of applying paragraph (2) for any calendar
8 year, the rate schedule under section 2001(c) used in com-
9 puting the applicable credit amount under paragraph (1)
10 for such calendar year shall, in lieu of the rates of tax
11 in effect for preceding calendar periods, be used in deter-
12 mining the amounts allowable as a credit under this sec-
13 tion for all preceding calendar periods.”.

14 (e) REPEAL OF DEDUCTION FOR STATE DEATH
15 TAXES.—

16 (1) IN GENERAL.—Section 2058 of such Code
17 (relating to State death taxes) is amended by adding
18 at the end the following:

19 “(c) TERMINATION.—This section shall not apply to
20 the estates of decedents dying after December 31, 2009.”.

21 (2) CONFORMING AMENDMENT.—Section
22 2106(a)(4) of such Code is amended by adding at
23 the end the following new sentence: “This paragraph
24 shall not apply to the estates of decedents dying
25 after December 31, 2009.”.

1 (f) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to estates of decedents dying, gen-
3 eration-skipping transfers, and gifts made, after Decem-
4 ber 31, 2009.

5 (g) ADDITIONAL MODIFICATIONS TO ESTATE TAX.—

6 (1) IN GENERAL.—The following provisions of
7 the Economic Growth and Tax Relief Reconciliation
8 Act of 2001, and the amendments made by such
9 provisions, are hereby repealed:

10 (A) Subtitles A and E of title V.

11 (B) Subsection (d), and so much of sub-
12 section (f)(3) as relates to subsection (d), of
13 section 511.

14 (C) Paragraph (2) of subsection (b), and
15 paragraph (2) of subsection (e), of section 521.

16 The Internal Revenue Code of 1986 shall be applied
17 as if such provisions and amendments had never
18 been enacted.

19 (2) SUNSET NOT TO APPLY.—Section 901 of
20 the Economic Growth and Tax Relief Reconciliation
21 Act of 2001 shall not apply to title V (other than
22 subtitles F, G, and H thereof) of such Act.

23 (3) REPEAL OF DEADWOOD.—

1 (A) Sections 2011, 2057, and 2604 of the
2 Internal Revenue Code of 1986 are hereby re-
3 pealed.

4 (B) The table of sections for part II of
5 subchapter A of chapter 11 of such Code is
6 amended by striking the item relating to section
7 2011.

8 (C) The table of sections for part IV of
9 subchapter A of chapter 11 of such Code is
10 amended by striking the item relating to section
11 2057.

12 (D) The table of sections for subchapter A
13 of chapter 13 of such Code is amended by strik-
14 ing the item relating to section 2604.

15 **SEC. 4. UNIFIED CREDIT INCREASED BY UNUSED UNIFIED**
16 **CREDIT OF DECEASED SPOUSE.**

17 (a) IN GENERAL.—Subsection (c) of section 2010 of
18 the Internal Revenue Code of 1986 (defining applicable
19 credit amount), as amended by section 3(b), is amended
20 by striking paragraph (2) and inserting the following new
21 paragraphs:

22 “(2) APPLICABLE EXCLUSION AMOUNT.—For
23 purposes of this subsection, the applicable exclusion
24 amount is the sum of—

25 “(A) the basic exclusion amount, and

1 “(B) in the case of a surviving spouse, the
2 aggregate deceased spousal unused exclusion
3 amount.

4 “(3) BASIC EXCLUSION AMOUNT.—

5 “(A) IN GENERAL.—For purposes of this
6 subsection, the basic exclusion amount is as fol-
7 lows:

8 “(i) For calendar year 2010,
9 \$3,750,000.

10 “(ii) For calendar year 2011,
11 \$4,000,000.

12 “(iii) For calendar year 2012,
13 \$4,250,000.

14 “(iv) For calendar year 2013,
15 \$4,500,000.

16 “(v) For calendar year 2014,
17 \$4,750,000.

18 “(vi) For calendar year 2015 and
19 thereafter, \$5,000,000.

20 “(B) INFLATION ADJUSTMENT.—In the
21 case of any decedent dying in a calendar year
22 after 2015, the \$5,000,000 amount in subpara-
23 graph (A)(vi) shall be increased by an amount
24 equal to—

25 “(i) such dollar amount, multiplied by

1 “(ii) the cost-of-living adjustment de-
2 termined under section 1(f)(3) for such
3 calendar year by substituting ‘calendar
4 year 2014’ for ‘calendar year 1992’ in sub-
5 paragraph (B) thereof.

6 If any amount as adjusted under the preceding
7 sentence is not a multiple of \$50,000, such
8 amount shall be rounded to the nearest multiple
9 of \$50,000.

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

14 “(A) the basic exclusion amount, or

15 “(B) the sum of the deceased spousal un-
16 used exclusion amounts of the surviving spouse.

17 “(5) DECEASED SPOUSAL UNUSED EXCLUSION
18 AMOUNT.—For purposes of this subsection, the term
19 ‘deceased spousal unused exclusion amount’ means,
20 with respect to the surviving spouse of any deceased
21 spouse dying after December 31, 2009, the excess (if
22 any) of—

23 “(A) the applicable exclusion amount of
24 the deceased spouse, over

1 “(B) the amount with respect to which the
2 tentative tax is determined under section
3 2001(b)(1) on the estate of such deceased
4 spouse.

5 “(6) SPECIAL RULES.—

6 “(A) ELECTION REQUIRED.—A deceased
7 spousal unused exclusion amount may not be
8 taken into account by a surviving spouse under
9 paragraph (5) unless the executor of the estate
10 of the deceased spouse files an estate tax return
11 on which such amount is computed and makes
12 an election on such return that such amount
13 may be so taken into account. Such election,
14 once made, shall be irrevocable. No election
15 may be made under this subparagraph if such
16 return is filed after the time prescribed by law
17 (including extensions) for filing such return.

18 “(B) EXAMINATION OF PRIOR RETURNS
19 AFTER EXPIRATION OF PERIOD OF LIMITATIONS
20 WITH RESPECT TO DECEASED SPOUSAL UN-
21 USED EXCLUSION AMOUNT.—Notwithstanding
22 any period of limitation in section 6501, after
23 the time has expired under section 6501 within
24 which a tax may be assessed under chapter 11
25 or 12 with respect to a deceased spousal unused

1 exclusion amount, the Secretary may examine a
2 return of the deceased spouse to make deter-
3 minations with respect to such amount for pur-
4 poses of carrying out this subsection.

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

8 (b) CONFORMING AMENDMENTS.—

9 (1) Paragraph (1) of section 2505(a), as
10 amended by section 3, is amended to read as follows:

11 “(1) the applicable credit amount under section
12 2010(c) which would apply if the donor died as of
13 the end of the calendar year, reduced by”.

14 (2) Section 2631(c) is amended by striking “the
15 applicable exclusion amount” and inserting “the
16 basic exclusion amount”.

17 (3) Section 6018(a)(1), after the application of
18 section 101(g), is amended by striking “applicable
19 exclusion amount” and inserting “basic exclusion
20 amount”.

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

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