

AMENDMENT TO H.R. 1**OFFERED BY MR. MITCHELL OF ARIZONA**

At the end of title I of division B, add the following:

1 **Subtitle I—Capital Gains Made**
2 **Permanent and Estate Tax Re-**
3 **form and Extension**

4 **SEC. 1801. INDIVIDUAL INCOME TAX RATES FOR CAPITAL**
5 **GAINS MADE PERMANENT.**

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

9 **SEC. 1802. REFORM AND EXTENSION OF ESTATE TAX AFTER**
10 **2009.**

11 (a) RESTORATION OF UNIFIED CREDIT AGAINST
12 GIFT TAX.—Paragraph (1) of section 2505(a) (relating
13 to general rule for unified credit against gift tax), after
14 the application of subsection (g), is amended by striking
15 “(determined as if the applicable exclusion amount were
16 \$1,000,000)”.

17 (b) EXCLUSION EQUIVALENT OF UNIFIED CREDIT
18 INCREASED TO \$5,000,000.—Subsection (c) of section
19 2010 (relating to unified credit against estate tax) is
20 amended to read as follows:

1 “(c) APPLICABLE CREDIT AMOUNT.—

2 “(1) IN GENERAL.—For purposes of this sec-
3 tion, the applicable credit amount is the amount of
4 the tentative tax which would be determined under
5 the rate schedule set forth in section 2001(c) if the
6 amount with respect to which such tentative tax is
7 to be computed were the applicable exclusion
8 amount.

9 “(2) APPLICABLE EXCLUSION AMOUNT.—

10 “(A) IN GENERAL.—For purposes of this
11 subsection, the applicable exclusion amount is
12 as follows:

13 “(i) For calendar year 2010,
14 \$3,750,000.

15 “(ii) For calendar year 2011,
16 \$4,000,000.

17 “(iii) For calendar year 2012,
18 \$4,250,000.

19 “(iv) For calendar year 2013,
20 \$4,500,000.

21 “(v) For calendar year 2014,
22 \$4,750,000.

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

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

6 “(i) such dollar amount, multiplied by
7 “(ii) the cost-of-living adjustment de-
8 termined under section 1(f)(3) for such
9 calendar year by substituting ‘calendar
10 year 2014’ for ‘calendar year 1992’ in sub-
11 paragraph (B) thereof.

12 If any amount as adjusted under the preceding
13 sentence is not a multiple of \$50,000, such
14 amount shall be rounded to the nearest multiple
15 of \$50,000.”.

16 (c) RATE SCHEDULE.—

17 (1) IN GENERAL.—Subsection (c) of section
18 2001 (relating to rate schedule) is amended to read
19 as follows:

20 “(c) RATE SCHEDULE.—

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

23 “(A) the product of the rate specified in
24 section 1(h)(1)(C) in effect on the date of the
25 decedent’s death multiplied by so much of the

1 sum described in subsection (b)(1) as does not
2 exceed \$25,000,000, and

3 “(B) twice the rate specified in section
4 1(h)(1)(C) in effect on the date of the dece-
5 dent’s death of so much of the sum described
6 in subsection (b)(1) as exceeds \$25,000,000.

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

12 “(A) such dollar amount, multiplied by

13 “(B) the cost-of-living adjustment deter-
14 mined under section 1(f)(3) for such calendar
15 year by substituting ‘calendar year 2014’ for
16 ‘calendar year 1992’ in subparagraph (B)
17 thereof.

18 If any amount as adjusted under the preceding sen-
19 tence is not a multiple of \$50,000, such amount
20 shall be rounded to the nearest multiple of
21 \$50,000.”.

22 (2) CONFORMING AMENDMENT.—Section
23 2502(a) (relating to computation of tax), after the
24 application of subsection (g), is amended by adding
25 at the end the following flush sentence:

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

6 (d) MODIFICATIONS OF ESTATE AND GIFT TAXES TO
7 REFLECT DIFFERENCES IN UNIFIED CREDIT RESULTING
8 FROM DIFFERENT TAX RATES.—

9 (1) ESTATE TAX.—

10 (A) IN GENERAL.—Section 2001(b)(2) (re-
11 lating to computation of tax) is amended by
12 striking “if the provisions of subsection (c) (as
13 in effect at the decedent’s death)” and inserting
14 “if the modifications described in subsection
15 (g)”.

16 (B) MODIFICATIONS.—Section 2001 is
17 amended by adding at the end the following
18 new subsection:

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

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

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

5 “(A) the applicable credit amount under
6 section 2505(a)(1), and

7 “(B) the sum of the amounts allowed as a
8 credit for all preceding periods under section
9 2505(a)(2).

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

16 (2) GIFT TAX.—Section 2505(a) (relating to
17 unified credit against gift tax), after the application
18 of subsection (g), is amended by adding at the end
19 the following new flush sentence:

20 “For purposes of applying paragraph (2) for any calendar
21 year, the rate schedule under section 2001(c) used in com-
22 puting the applicable credit amount under paragraph (1)
23 for such calendar year shall, in lieu of the rates of tax
24 in effect for preceding calendar periods, be used in deter-

1 mining the amounts allowable as a credit under this sec-
2 tion for all preceding calendar periods.”.

3 (e) REPEAL OF DEDUCTION FOR STATE DEATH
4 TAXES.—

5 (1) IN GENERAL.—Section 2058 (relating to
6 State death taxes) is amended by adding at the end
7 the following:

8 “(e) TERMINATION.—This section shall not apply to
9 the estates of decedents dying after December 31, 2009.”.

10 (2) CONFORMING AMENDMENT.—Section
11 2106(a)(4) is amended by adding at the end the fol-
12 lowing new sentence: “This paragraph shall not
13 apply to the estates of decedents dying after Decem-
14 ber 31, 2009.”.

15 (f) 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 (g) ADDITIONAL MODIFICATIONS TO ESTATE TAX.—

20 (1) IN GENERAL.—The following provisions of
21 the Economic Growth and Tax Relief Reconciliation
22 Act of 2001, and the amendments made by such
23 provisions, are hereby repealed:

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

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

4 (C) Paragraph (2) of subsection (b), and
5 paragraph (2) of subsection (e), of section 521.

6 The Internal Revenue Code of 1986 shall be applied
7 as if such provisions and amendments had never
8 been enacted.

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

13 (3) REPEAL OF DEADWOOD.—

14 (A) Sections 2011, 2057, and 2604 are
15 hereby repealed.

16 (B) The table of sections for part II of
17 subchapter A of chapter 11 is amended by
18 striking the item relating to section 2011.

19 (C) The table of sections for part IV of
20 subchapter A of chapter 11 is amended by
21 striking the item relating to section 2057.

22 (D) The table of sections for subchapter A
23 of chapter 13 is amended by striking the item
24 relating to section 2604.

1 **SEC. 1803. UNIFIED CREDIT INCREASED BY UNUSED UNI-**
2 **FIED CREDIT OF DECEASED SPOUSE.**

3 (a) IN GENERAL.—Subsection (c) of section 2010
4 (defining applicable credit amount), as amended by section
5 3(b), is amended by striking paragraph (2) and inserting
6 the following new paragraphs:

7 “(2) APPLICABLE EXCLUSION AMOUNT.—For
8 purposes of this subsection, the applicable exclusion
9 amount is the sum of—

10 “(A) the basic exclusion amount, and

11 “(B) in the case of a surviving spouse, the
12 aggregate deceased spousal unused exclusion
13 amount.

14 “(3) BASIC EXCLUSION AMOUNT.—

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

18 “(i) For calendar year 2010,
19 \$3,750,000.

20 “(ii) For calendar year 2011,
21 \$4,000,000.

22 “(iii) For calendar year 2012,
23 \$4,250,000.

24 “(iv) For calendar year 2013,
25 \$4,500,000.

1 “(v) For calendar year 2014,
2 \$4,750,000.

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

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

10 “(i) such dollar amount, multiplied by

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

16 If any amount as adjusted under the preceding
17 sentence is not a multiple of \$50,000, such
18 amount shall be rounded to the nearest multiple
19 of \$50,000.

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

24 “(A) the basic exclusion amount, or

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

3 “(5) DECEASED SPOUSAL UNUSED EXCLUSION
4 AMOUNT.—For purposes of this subsection, the term
5 ‘deceased spousal unused exclusion amount’ means,
6 with respect to the surviving spouse of any deceased
7 spouse dying after December 31, 2009, the excess (if
8 any) of—

9 “(A) the applicable exclusion amount of
10 the deceased spouse, over

11 “(B) the amount with respect to which the
12 tentative tax is determined under section
13 2001(b)(1) on the estate of such deceased
14 spouse.

15 “(6) SPECIAL RULES.—

16 “(A) ELECTION REQUIRED.—A deceased
17 spousal unused exclusion amount may not be
18 taken into account by a surviving spouse under
19 paragraph (5) unless the executor of the estate
20 of the deceased spouse files an estate tax return
21 on which such amount is computed and makes
22 an election on such return that such amount
23 may be so taken into account. Such election,
24 once made, shall be irrevocable. No election
25 may be made under this subparagraph if such

1 return is filed after the time prescribed by law
2 (including extensions) for filing such return.

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

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

18 (b) CONFORMING AMENDMENTS.—

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

21 “(1) the applicable credit amount under section
22 2010(c) which would apply if the donor died as of
23 the end of the calendar year, reduced by”.

1 return is filed after the time prescribed by law
2 (including extensions) for filing such return.

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

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

18 (b) CONFORMING AMENDMENTS.—

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

21 “(1) the applicable credit amount under section
22 2010(c) which would apply if the donor died as of
23 the end of the calendar year, reduced by”.

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

4 (3) Section 6018(a)(1), after the application of
5 section 101(g), is amended by striking “applicable
6 exclusion amount” and inserting “basic exclusion
7 amount”.

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

