

VETO MESSAGE ON H.R. 8, THE DEATH TAX
ELIMINATION ACT OF 2000

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

HIS VETO OF H.R. 8, THE "DEATH TAX ELIMINATION ACT OF 2000"



SEPTEMBER 6, 2000.—Message and accompanying papers referred to the
Committee on Ways and Means and ordered to be printed

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To the House of Representatives:

I am returning herewith without my approval H.R. 8, legislation to phase out Federal estate, gift, and generation-skipping transfer taxes over a 10-year period. While I support and would sign targeted and fiscally responsible legislation that provides estate tax relief for small businesses, family farms, and principal residence along the lines proposed by House and Senate Democrats, this bill is fiscally irresponsible and provides a very expensive tax break for the best-off Americans while doing nothing for the vast majority of working families. Starting in 2010, H.R. 8 would drain more than \$50 billion annually to benefit only tens of thousands of families, taking resources that could have been used to strengthen Social Security and Medicare for tens of millions of families.

This repeal of the estate tax is the latest part in a tax plan that would cost over \$2 trillion, spending projected surpluses that may never materialize and returning America to deficits. This would reverse the fiscal discipline that has helped make the American economy the strongest it has been in generations and would leave no resources to strengthen Social Security or Medicare, provide a voluntary Medicare prescription drug benefit, invest in key priorities like education, or pay off the debt held by the public by 2012. This tax plan would threaten our continued economic expansion by raising interest rates and choking off investment.

We should cut taxes this year, but they should be the right tax cuts, targeted to working families to help our economy grow—not tax breaks that will help only the wealthiest few while putting our prosperity at risk. Our tax cuts will help send our children to college, help families with members who need long-term care, help pay for child care, and help fund desperately needed school construction. Overall, my tax program will provide substantially more benefits to middle-income American families than the tax cuts passed by the congressional tax-writing committees this year, at less than half the cost.

H.R. 8, in particular, suffers from several problems. The true cost of the bill is masked by the backloading of the tax cut. H.R. 8 would explode in cost from about \$100 billion from 2001–2010 to about \$750 billion from 2011–2020, just when the baby boom generation begins to retire and Social Security and Medicare come under strain.

Repeal would also be unwise because estate and gift taxes play an important role in the overall fairness and progressivity of our tax system. These taxes ensure that the portion of income that is not taxed during life (such as unrealized capital gains) is taxed at death. Estate tax repeal would benefit only about 2 percent of decedents, providing an average tax cut of \$800,000 to only 54,000 families in 2010. More than half of the benefits of repeal would go to one-tenth of one percent of families, just 3,000 families annually,

with an average tax cut of \$7 million. Furthermore, research suggests that repeal of the estate and gift taxes is likely to reduce charitable giving by as much as \$6 billion per year.

In 1997, I signed legislation that reduced the estate tax for small businesses and family farms, but I believe that the estate tax is still burdensome to some family farms and small businesses. However, only a tiny fraction of the tax relief provided under H.R. 8 benefits these important sectors of our economy, and much of that relief would not be realized for a decade. In contrast, House and Senate Democrats have proposed alternatives that would provide significant, immediate tax relief to family-owned businesses and farms in a manner that is much more fiscally responsible than outright repeal. For example, the Senate Democratic alternative would take about two-thirds of families off the estate tax entirely, and could eliminate estate taxes for almost all small businesses and family farms. In contrast to H.R. 8—which waits until 2010 to repeal the estate tax—most of the relief in the Democratic alternatives is offered immediately.

By providing more targeted and less costly relief, we preserve the resources necessary to provide a Medicare prescription drug benefit, extend the life of Social Security and Medicare, and pay down the debt by 2012. Maintaining fiscal discipline also would continue to provide the best kind of tax relief to all Americans, not just the wealthiest few, by reducing interest rates on home mortgages, student loans, and other essential investments.

This surplus comes from the hard work and ingenuity of the American people. We owe it to them—and to their children—to make the best use of it. This bill, in combination with the tax bills already passed and planned for next year, would squander the surplus—without providing the immediate estate tax relief that family farms, small businesses, and other estates could receive under the fiscally responsible alternatives rejected by the Congress. For that reason, I must veto this bill.

Since the adjournment of the Congress has prevented my return of H.R. 8 within the meaning of Article I, section 7, clause 2 of the Constitution, my withholding of approval from the bill precludes its becoming law. The Pocket Veto Case, 279 U.S. 655 (1929). In addition to withholding my signature and thereby invoking my constitutional power to “pocket veto” bills during an adjournment of the Congress, to avoid litigation, I am also sending H.R. 8 to the House of Representatives with my objections, to leave no possible doubt that I have vetoed the measure.

I continue to welcome the opportunity to work with the Congress on a bipartisan basis on tax legislation that is targeted, fiscally responsible, and geared towards continuing the economic strength we all have worked so hard to achieve.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *August 31, 2000.*

H. R. 8

One Hundred Sixth Congress
of the
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday,
the twenty-fourth day of January, two thousand*

An Act

To amend the Internal Revenue Code of 1986 to phaseout the estate and gift taxes over a 10-year period.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; ETC.

(a) **SHORT TITLE.**—This Act may be cited as the “Death Tax Elimination Act of 2000”.

(b) **AMENDMENT OF 1986 CODE.**—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

**TITLE I—REPEAL OF ESTATE, GIFT, AND
GENERATION-SKIPPING TAXES; RE-
PEAL OF STEP UP IN BASIS AT DEATH**

SEC. 101. REPEAL OF ESTATE, GIFT, AND GENERATION-SKIPPING TAXES.

(a) **IN GENERAL.**—Subtitle B is hereby repealed.

(b) **EFFECTIVE DATE.**—The repeal made by subsection (a) shall apply to the estates of decedents dying, and gifts and generation-skipping transfers made, after December 31, 2009.

SEC. 102. TERMINATION OF STEP UP IN BASIS AT DEATH.

(a) **TERMINATION OF APPLICATION OF SECTION 1014.**—Section 1014 (relating to basis of property acquired from a decedent) is amended by adding at the end the following:

“(f) **TERMINATION.**—In the case of a decedent dying after December 31, 2009, this section shall not apply to property for which basis is provided by section 1022.”.

(b) **CONFORMING AMENDMENT.**—Subsection (a) of section 1016 (relating to adjustments to basis) is amended by striking “and” at the end of paragraph (26), by striking the period at the end of paragraph (27) and inserting “, and”, and by adding at the end the following:

“(28) to the extent provided in section 1022 (relating to basis for certain property acquired from a decedent dying after December 31, 2009).”.

SEC. 103. CARRYOVER BASIS AT DEATH.

(a) GENERAL RULE.—Part II of subchapter O of chapter 1 (relating to basis rules of general application) is amended by inserting after section 1021 the following new section:

“SEC. 1022. CARRYOVER BASIS FOR CERTAIN PROPERTY ACQUIRED FROM A DECEDENT DYING AFTER DECEMBER 31, 2009.

“(a) CARRYOVER BASIS.—Except as otherwise provided in this section, the basis of carryover basis property in the hands of a person acquiring such property from a decedent shall be determined under section 1015.

“(b) CARRYOVER BASIS PROPERTY DEFINED.—

“(1) IN GENERAL.—For purposes of this section, the term ‘carryover basis property’ means any property—

“(A) which is acquired from or passed from a decedent who died after December 31, 2009, and

“(B) which is not excluded pursuant to paragraph (2). The property taken into account under subparagraph (A) shall be determined under section 1014(b) without regard to subparagraph (A) of the last sentence of paragraph (9) thereof.

“(2) CERTAIN PROPERTY NOT CARRYOVER BASIS PROPERTY.—The term ‘carryover basis property’ does not include—

“(A) any item of gross income in respect of a decedent described in section 691,

“(B) property of the decedent to the extent that the aggregate adjusted fair market value of such property does not exceed \$1,300,000, and

“(C) property which was acquired from the decedent by the surviving spouse of the decedent (and which would be carryover basis property without regard to this subparagraph) but only if the value of such property would have been deductible from the value of the taxable estate of the decedent under section 2056, as in effect on the day before the date of the enactment of the Death Tax Elimination Act of 2000.

For purposes of this subsection, the term ‘adjusted fair market value’ means, with respect to any property, fair market value reduced by any indebtedness secured by such property.

“(3) LIMITATION ON EXCEPTION FOR PROPERTY ACQUIRED BY SURVIVING SPOUSE.—The adjusted fair market value of property which is not carryover basis property by reason of paragraph (2)(C) shall not exceed \$3,000,000.

“(4) ALLOCATION OF EXCEPTED AMOUNTS.—The executor shall allocate the limitations under paragraphs (2)(B) and (3).

“(5) INFLATION ADJUSTMENT OF EXCEPTED AMOUNTS.—In the case of decedents dying in a calendar year after 2010, the dollar amounts in paragraphs (2)(B) and (3) shall each be increased by an amount equal to the product of—

“(A) such dollar amount, and

“(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting ‘2009’ for ‘1992’ in subparagraph (B) thereof.

If any increase determined under the preceding sentence is not a multiple of \$10,000, such increase shall be rounded to the nearest multiple of \$10,000.

“(c) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.”.

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(b) MISCELLANEOUS AMENDMENTS RELATED TO CARRYOVER BASIS.—

(1) CAPITAL GAIN TREATMENT FOR INHERITED ART WORK OR SIMILAR PROPERTY.—

(A) IN GENERAL.—Subparagraph (C) of section 1221(a)(3) (defining capital asset) is amended by inserting “(other than by reason of section 1022)” after “is determined”.

(B) COORDINATION WITH SECTION 170.—Paragraph (1) of section 170(e) (relating to certain contributions of ordinary income and capital gain property) is amended by adding at the end the following: “For purposes of this paragraph, the determination of whether property is a capital asset shall be made without regard to the exception contained in section 1221(a)(3)(C) for basis determined under section 1022.”

(2) DEFINITION OF EXECUTOR.—Section 7701(a) (relating to definitions) is amended by adding at the end the following:

“(47) EXECUTOR.—The term ‘executor’ means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent.”

(3) CLERICAL AMENDMENT.—The table of sections for part II of subchapter O of chapter 1 is amended by adding at the end the following new item:

“Sec. 1022. Carryover basis for certain property acquired from a decedent dying after December 31, 2009.”

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

TITLE II—REDUCTIONS OF ESTATE AND GIFT TAX RATES PRIOR TO REPEAL

SEC. 201. ADDITIONAL REDUCTIONS OF ESTATE AND GIFT TAX RATES.

(a) MAXIMUM RATE OF TAX REDUCED TO 50 PERCENT.—

(1) IN GENERAL.—The table contained in section 2001(c)(1) is amended by striking the two highest brackets and inserting the following:

“Over \$2,500,000	\$1,025,800, plus 50% of the excess over \$2,500,000.”
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(2) PHASE-IN OF REDUCED RATE.—Subsection (c) of section 2001 is amended by adding at the end the following new paragraph:

“(3) PHASE-IN OF REDUCED RATE.—In the case of decedents dying, and gifts made, during 2001, the last item in the table contained in paragraph (1) shall be applied by substituting ‘53%’ for ‘50%’.”

(b) REPEAL OF PHASEOUT OF GRADUATED RATES.—Subsection (c) of section 2001 is amended by striking paragraph (2) and redesignating paragraph (3), as added by subsection (a), as paragraph (2).

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(c) **ADDITIONAL REDUCTIONS OF RATES OF TAX.**—Subsection (c) of section 2001, as so amended, is amended by adding at the end the following new paragraph:

“(3) **PHASEDOWN OF TAX.**—In the case of estates of decedents dying, and gifts made, during any calendar year after 2002 and before 2010—

“(A) **IN GENERAL.**—Except as provided in subparagraph (C), the tentative tax under this subsection shall be determined by using a table prescribed by the Secretary (in lieu of using the table contained in paragraph (1)) which is the same as such table; except that—

“(i) each of the rates of tax shall be reduced by the number of percentage points determined under subparagraph (B), and

“(ii) the amounts setting forth the tax shall be adjusted to the extent necessary to reflect the adjustments under clause (i).

“(B) **PERCENTAGE POINTS OF REDUCTION.**—

“For calendar year:	The number of percentage points is:
2003	1.0
2004	2.0
2005	3.0
2006	4.0
2007	5.5
2008	7.5
2009	9.5.

“(C) **COORDINATION WITH INCOME TAX RATES.**—The reductions under subparagraph (A)—

“(i) shall not reduce any rate under paragraph (1) below the lowest rate in section 1(c), and

“(ii) shall not reduce the highest rate under paragraph (1) below the highest rate in section 1(c).

“(D) **COORDINATION WITH CREDIT FOR STATE DEATH TAXES.**—Rules similar to the rules of subparagraph (A) shall apply to the table contained in section 2011(b) except that the Secretary shall prescribe percentage point reductions which maintain the proportionate relationship (as in effect before any reduction under this paragraph) between the credit under section 2011 and the tax rates under subsection (c).”

(d) **EFFECTIVE DATES.**—

(1) **SUBSECTIONS (a) AND (b).**—The amendments made by subsections (a) and (b) shall apply to estates of decedents dying, and gifts made, after December 31, 2000.

(2) **SUBSECTION (c).**—The amendment made by subsection (c) shall apply to estates of decedents dying, and gifts made, after December 31, 2002.

TITLE III—UNIFIED CREDIT REPLACED WITH UNIFIED EXEMPTION AMOUNT

SEC. 301. UNIFIED CREDIT AGAINST ESTATE AND GIFT TAXES REPLACED WITH UNIFIED EXEMPTION AMOUNT.

(a) **IN GENERAL.**—

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(1) ESTATE TAX.—Subsection (b) of section 2001 (relating to computation of tax) is amended to read as follows:

“(b) COMPUTATION OF TAX.—

“(1) IN GENERAL.—The tax imposed by this section shall be the amount equal to the excess (if any) of—

“(A) the tentative tax determined under paragraph (2), over

“(B) the aggregate amount of tax which would have been payable under chapter 12 with respect to gifts made by the decedent after December 31, 1976, if the provisions of subsection (c) (as in effect at the decedent's death) had been applicable at the time of such gifts.

“(2) TENTATIVE TAX.—For purposes of paragraph (1), the tentative tax determined under this paragraph is a tax computed under subsection (c) on the excess of—

“(A) the sum of—

“(i) the amount of the taxable estate, and

“(ii) the amount of the adjusted taxable gifts, over

“(B) the exemption amount for the calendar year in which the decedent died.

“(3) EXEMPTION AMOUNT.—For purposes of paragraph (2), the term ‘exemption amount’ means the amount determined in accordance with the following table:

“In the case of calendar year:	The exemption amount is:
2001	\$675,000
2002 and 2003	\$700,000
2004	\$850,000
2005	\$950,000
2006 or thereafter	\$1,000,000.

“(4) ADJUSTED TAXABLE GIFTS.—For purposes of paragraph (2), the term ‘adjusted taxable gifts’ means the total amount of the taxable gifts (within the meaning of section 2503) made by the decedent after December 31, 1976, other than gifts which are includible in the gross estate of the decedent.”

(2) GIFT TAX.—Subsection (a) of section 2502 (relating to computation of tax) is amended to read as follows:

“(a) COMPUTATION OF TAX.—

“(1) IN GENERAL.—The tax imposed by section 2501 for each calendar year shall be the amount equal to the excess (if any) of—

“(A) the tentative tax determined under paragraph (2), over

“(B) the tax paid under this section for all prior calendar periods.

“(2) TENTATIVE TAX.—For purposes of paragraph (1), the tentative tax determined under this paragraph for a calendar year is a tax computed under section 2001(c) on the excess of—

“(A) the aggregate sum of the taxable gifts for such calendar year and for each of the preceding calendar periods, over

“(B) the exemption amount under section 2001(b)(3) for such calendar year.”

(b) REPEAL OF UNIFIED CREDITS.—

(1) Section 2010 (relating to unified credit against estate tax) is hereby repealed.

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(2) Section 2505 (relating to unified credit against gift tax) is hereby repealed.

(c) CONFORMING AMENDMENTS.—

(1)(A) Subsection (b) of section 2011 is amended—

- (i) by striking “adjusted” in the table; and
- (ii) by striking the last sentence.

(B) Subsection (f) of section 2011 is amended by striking “, reduced by the amount of the unified credit provided by section 2010”.

(2) Subsection (a) of section 2012 is amended by striking “and the unified credit provided by section 2010”.

(3) Subparagraph (A) of section 2013(c)(1) is amended by striking “2010”.

(4) Paragraph (2) of section 2014(b) is amended by striking “2010, 2011,” and inserting “2011”.

(5) Clause (ii) of section 2056A(b)(12)(C) is amended to read as follows:

“(ii) to treat any reduction in the tax imposed by paragraph (1)(A) by reason of the credit allowable under section 2010 (as in effect on the day before the date of the enactment of the Death Tax Elimination Act of 2000) or the exemption amount allowable under section 2001(b) with respect to the decedent as a credit under section 2505 (as so in effect) or exemption under section 2521 (as the case may be) allowable to such surviving spouse for purposes of determining the amount of the exemption allowable under section 2521 with respect to taxable gifts made by the surviving spouse during the year in which the spouse becomes a citizen or any subsequent year.”

(6) Subsection (a) of section 2057 is amended by striking paragraphs (2) and (3) and inserting the following new paragraph:

“(2) MAXIMUM DEDUCTION.—The deduction allowed by this section shall not exceed the excess of \$1,300,000 over the exemption amount (as defined in section 2001(b)(3)).”

(7)(A) Subsection (b) of section 2101 is amended to read as follows:

“(b) COMPUTATION OF TAX.—

“(1) IN GENERAL.—The tax imposed by this section shall be the amount equal to the excess (if any) of—

“(A) the tentative tax determined under paragraph (2), over

“(B) a tentative tax computed under section 2001(c) on the amount of the adjusted taxable gifts.

“(2) TENTATIVE TAX.—For purposes of paragraph (1), the tentative tax determined under this paragraph is a tax computed under section 2001(c) on the excess of—

“(A) the sum of—

“(i) the amount of the taxable estate, and

“(ii) the amount of the adjusted taxable gifts, over

“(B) the exemption amount for the calendar year in which the decedent died.

“(3) EXEMPTION AMOUNT.—

“(A) IN GENERAL.—The term ‘exemption amount’ means \$60,000.

“(B) RESIDENTS OF POSSESSIONS OF THE UNITED STATES.—In the case of a decedent who is considered to be a nonresident not a citizen of the United States under section 2209, the exemption amount under this paragraph shall be the greater of—

“(i) \$60,000, or

“(ii) that proportion of \$175,000 which the value of that part of the decedent’s gross estate which at the time of his death is situated in the United States bears to the value of his entire gross estate wherever situated.

“(C) SPECIAL RULES.—

“(i) COORDINATION WITH TREATIES.—To the extent required under any treaty obligation of the United States, the exemption amount allowed under this paragraph shall be equal to the amount which bears the same ratio to the exemption amount under section 2001(b)(3) (for the calendar year in which the decedent died) as the value of the part of the decedent’s gross estate which at the time of his death is situated in the United States bears to the value of his entire gross estate wherever situated. For purposes of the preceding sentence, property shall not be treated as situated in the United States if such property is exempt from the tax imposed by this subchapter under any treaty obligation of the United States.

“(ii) COORDINATION WITH GIFT TAX EXEMPTION AND UNIFIED CREDIT.—If an exemption has been allowed under section 2521 (or a credit has been allowed under section 2505 as in effect on the day before the date of the enactment of the Death Tax Elimination Act of 2000) with respect to any gift made by the decedent, each dollar amount contained in subparagraph (A) or (B) or the exemption amount applicable under clause (i) of this subparagraph (whichever applies) shall be reduced by the exemption so allowed under section 2521 (or, in the case of such a credit, by the amount of the gift for which the credit was so allowed).”.

(8) Section 2102 is amended by striking subsection (c).

(9)(A) Subsection (a) of section 2107 is amended by adding at the end the following new paragraph:

“(3) LIMITATION ON EXEMPTION AMOUNT.—Subparagraphs (B) and (C) of section 2101(b)(3) shall not apply in applying section 2101 for purposes of this section.”.

(B) Subsection (c) of section 2107 is amended—

(i) by striking paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively; and

(ii) by striking the second sentence of paragraph (2) (as so redesignated).

(10) Paragraph (1) of section 6018(a) is amended by striking “the applicable exclusion amount in effect under section 2010(c)” and inserting “the exemption amount under section 2001(b)(3)”.

(11) Subparagraph (A) of section 6601(j)(2) is amended to read as follows:

“(A) the amount of the tentative tax which would be determined under the rate schedule set forth in section

2001(c) if the amount with respect to which such tentative tax is to be computed were \$1,000,000, or”.

(12) The table of sections for part II of subchapter A of chapter 11 is amended by striking the item relating to section 2010.

(13) The table of sections for subchapter A of chapter 12 is amended by striking the item relating to section 2505.

(d) EFFECTIVE DATE.—The amendments made by this section—

(1) insofar as they relate to the tax imposed by chapter 11 of the Internal Revenue Code of 1986, shall apply to estates of decedents dying after December 31, 2000; and

(2) insofar as they relate to the tax imposed by chapter 12 of such Code, shall apply to gifts made after December 31, 2000.

TITLE IV—MODIFICATIONS OF GENERATION-SKIPPING TRANSFER TAX

SEC. 401. DEEMED ALLOCATION OF GST EXEMPTION TO LIFETIME TRANSFERS TO TRUSTS; RETROACTIVE ALLOCATIONS.

(a) IN GENERAL.—Section 2632 (relating to special rules for allocation of GST exemption) is amended by redesignating subsection (c) as subsection (e) and by inserting after subsection (b) the following new subsections:

“(c) DEEMED ALLOCATION TO CERTAIN LIFETIME TRANSFERS TO GST TRUSTS.—

“(1) IN GENERAL.—If any individual makes an indirect skip during such individual’s lifetime, any unused portion of such individual’s GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

“(2) UNUSED PORTION.—For purposes of paragraph (1), the unused portion of an individual’s GST exemption is that portion of such exemption which has not previously been—

“(A) allocated by such individual,

“(B) treated as allocated under subsection (b) with respect to a direct skip occurring during or before the calendar year in which the indirect skip is made, or

“(C) treated as allocated under paragraph (1) with respect to a prior indirect skip.

“(3) DEFINITIONS.—

“(A) INDIRECT SKIP.—For purposes of this subsection, the term ‘indirect skip’ means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST trust.

“(B) GST TRUST.—The term ‘GST trust’ means a trust that could have a generation-skipping transfer with respect to the transferor unless—

“(i) the trust instrument provides that more than 25 percent of the trust corpus must be distributed to or may be withdrawn by one or more individuals who are non-skip persons—

“(I) before the date that the individual attains age 46,

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“(II) on or before one or more dates specified in the trust instrument that will occur before the date that such individual attains age 46, or

“(III) upon the occurrence of an event that, in accordance with regulations prescribed by the Secretary, may reasonably be expected to occur before the date that such individual attains age 46;

“(ii) the trust instrument provides that more than 25 percent of the trust corpus must be distributed to or may be withdrawn by one or more individuals who are non-skip persons and who are living on the date of death of another person identified in the instrument (by name or by class) who is more than 10 years older than such individuals;

“(iii) the trust instrument provides that, if one or more individuals who are non-skip persons die on or before a date or event described in clause (i) or (ii), more than 25 percent of the trust corpus either must be distributed to the estate or estates of one or more of such individuals or is subject to a general power of appointment exercisable by one or more of such individuals;

“(iv) the trust is a trust any portion of which would be included in the gross estate of a non-skip person (other than the transferor) if such person died immediately after the transfer;

“(v) the trust is a charitable lead annuity trust (within the meaning of section 2642(e)(3)(A)) or a charitable remainder annuity trust or a charitable remainder unitrust (within the meaning of section 664(d)); or

“(vi) the trust is a trust with respect to which a deduction was allowed under section 2522 for the amount of an interest in the form of the right to receive annual payments of a fixed percentage of the net fair market value of the trust property (determined yearly) and which is required to pay principal to a non-skip person if such person is alive when the yearly payments for which the deduction was allowed terminate.

For purposes of this subparagraph, the value of transferred property shall not be considered to be includible in the gross estate of a non-skip person or subject to a right of withdrawal by reason of such person holding a right to withdraw so much of such property as does not exceed the amount referred to in section 2503(b) with respect to any transferor, and it shall be assumed that powers of appointment held by non-skip persons will not be exercised.

“(4) AUTOMATIC ALLOCATIONS TO CERTAIN GST TRUSTS.— For purposes of this subsection, an indirect skip to which section 2642(f) applies shall be deemed to have been made only at the close of the estate tax inclusion period. The fair market value of such transfer shall be the fair market value of the trust property at the close of the estate tax inclusion period.

“(5) APPLICABILITY AND EFFECT.—

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“(A) IN GENERAL.—An individual—

“(i) may elect to have this subsection not apply to—

“(I) an indirect skip, or

“(II) any or all transfers made by such individual to a particular trust, and

“(ii) may elect to treat any trust as a GST trust for purposes of this subsection with respect to any or all transfers made by such individual to such trust.

“(B) ELECTIONS.—

“(i) ELECTIONS WITH RESPECT TO INDIRECT SKIPS.—An election under subparagraph (A)(i)(I) shall be deemed to be timely if filed on a timely filed gift tax return for the calendar year in which the transfer was made or deemed to have been made pursuant to paragraph (4) or on such later date or dates as may be prescribed by the Secretary.

“(ii) OTHER ELECTIONS.—An election under clause (i)(II) or (ii) of subparagraph (A) may be made on a timely filed gift tax return for the calendar year for which the election is to become effective.

“(d) RETROACTIVE ALLOCATIONS.—

“(1) IN GENERAL.—If—

“(A) a non-skip person has an interest or a future interest in a trust to which any transfer has been made,

“(B) such person—

“(i) is a lineal descendant of a grandparent of the transferor or of a grandparent of the transferor’s spouse or former spouse, and

“(ii) is assigned to a generation below the generation assignment of the transferor, and

“(C) such person predeceases the transferor, then the transferor may make an allocation of any of such transferor’s unused GST exemption to any previous transfer or transfers to the trust on a chronological basis.

“(2) SPECIAL RULES.—If the allocation under paragraph (1) by the transferor is made on a gift tax return filed on or before the date prescribed by section 6075(b) for gifts made within the calendar year within which the non-skip person’s death occurred—

“(A) the value of such transfer or transfers for purposes of section 2642(a) shall be determined as if such allocation had been made on a timely filed gift tax return for each calendar year within which each transfer was made,

“(B) such allocation shall be effective immediately before such death, and

“(C) the amount of the transferor’s unused GST exemption available to be allocated shall be determined immediately before such death.

“(3) FUTURE INTEREST.—For purposes of this subsection, a person has a future interest in a trust if the trust may permit income or corpus to be paid to such person on a date or dates in the future.”

(b) CONFORMING AMENDMENT.—Paragraph (2) of section 2632(b) is amended by striking “with respect to a direct skip” and inserting “or subsection (c)(1)”.

(c) EFFECTIVE DATES.—

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(1) **DEEMED ALLOCATION.**—Section 2632(c) of the Internal Revenue Code of 1986 (as added by subsection (a)), and the amendment made by subsection (b), shall apply to transfers subject to chapter 11 or 12 made after December 31, 1999, and to estate tax inclusion periods ending after December 31, 1999.

(2) **RETROACTIVE ALLOCATIONS.**—Section 2632(d) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to deaths of non-skip persons occurring after December 31, 1999.

SEC. 402. SEVERING OF TRUSTS.

(a) **IN GENERAL.**—Subsection (a) of section 2642 (relating to inclusion ratio) is amended by adding at the end the following new paragraph:

“(3) **SEVERING OF TRUSTS.**—

“(A) **IN GENERAL.**—If a trust is severed in a qualified severance, the trusts resulting from such severance shall be treated as separate trusts thereafter for purposes of this chapter.

“(B) **QUALIFIED SEVERANCE.**—For purposes of subparagraph (A)—

“(i) **IN GENERAL.**—The term ‘qualified severance’ means the division of a single trust and the creation (by any means available under the governing instrument or under local law) of two or more trusts if—

“(I) the single trust was divided on a fractional basis, and

“(II) the terms of the new trusts, in the aggregate, provide for the same succession of interests of beneficiaries as are provided in the original trust.

“(ii) **TRUSTS WITH INCLUSION RATIO GREATER THAN ZERO.**—If a trust has an inclusion ratio of greater than zero and less than 1, a severance is a qualified severance only if the single trust is divided into two trusts, one of which receives a fractional share of the total value of all trust assets equal to the applicable fraction of the single trust immediately before the severance. In such case, the trust receiving such fractional share shall have an inclusion ratio of zero and the other trust shall have an inclusion ratio of 1.

“(iii) **REGULATIONS.**—The term ‘qualified severance’ includes any other severance permitted under regulations prescribed by the Secretary.

“(C) **TIMING AND MANNER OF SEVERANCES.**—A severance pursuant to this paragraph may be made at any time. The Secretary shall prescribe by forms or regulations the manner in which the qualified severance shall be reported to the Secretary.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to severances after December 31, 1999.

SEC. 403. MODIFICATION OF CERTAIN VALUATION RULES.

(a) **GIFTS FOR WHICH GIFT TAX RETURN FILED OR DEEMED ALLOCATION MADE.**—Paragraph (1) of section 2642(b) (relating to valuation rules, etc.) is amended to read as follows:

“(1) GIFTS FOR WHICH GIFT TAX RETURN FILED OR DEEMED ALLOCATION MADE.—If the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by section 6075(b) for such transfer or is deemed to be made under section 2632 (b)(1) or (c)(1)—

“(A) the value of such property for purposes of subsection (a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of section 2001(f)(2)), or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, its value at the time of the close of the estate tax inclusion period, and

“(B) such allocation shall be effective on and after the date of such transfer, or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, on and after the close of such estate tax inclusion period.”

(b) TRANSFERS AT DEATH.—Subparagraph (A) of section 2642(b)(2) is amended to read as follows:

“(A) TRANSFERS AT DEATH.—If property is transferred as a result of the death of the transferor, the value of such property for purposes of subsection (a) shall be its value as finally determined for purposes of chapter 11; except that, if the requirements prescribed by the Secretary respecting allocation of post-death changes in value are not met, the value of such property shall be determined as of the time of the distribution concerned.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers subject to chapter 11 or 12 of the Internal Revenue Code of 1986 made after December 31, 1999.

SEC. 404. RELIEF PROVISIONS.

(a) IN GENERAL.—Section 2642 is amended by adding at the end the following new subsection:

“(g) RELIEF PROVISIONS.—

“(1) RELIEF FROM LATE ELECTIONS.—

“(A) IN GENERAL.—The Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make—

“(i) an allocation of GST exemption described in paragraph (1) or (2) of subsection (b), and

“(ii) an election under subsection (b)(3) or (c)(5) of section 2632.

Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

“(B) BASIS FOR DETERMINATIONS.—In determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

“(2) **SUBSTANTIAL COMPLIANCE.**—An allocation of GST exemption under section 2632 that demonstrates an intent to have the lowest possible inclusion ratio with respect to a transfer or a trust shall be deemed to be an allocation of so much of the transferor’s unused GST exemption as produces the lowest possible inclusion ratio. In determining whether there has been substantial compliance, all relevant circumstances shall be taken into account, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant.”.

(b) **EFFECTIVE DATES.**—

(1) **RELIEF FROM LATE ELECTIONS.**—Section 2642(g)(1) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to requests pending on, or filed after, December 31, 1999.

(2) **SUBSTANTIAL COMPLIANCE.**—Section 2642(g)(2) of such Code (as so added) shall apply to transfers subject to chapter 11 or 12 of the Internal Revenue Code of 1986 made after December 31, 1999. No implication is intended with respect to the availability of relief from late elections or the application of a rule of substantial compliance on or before such date.

TITLE V—CONSERVATION EASEMENTS

SEC. 501. EXPANSION OF ESTATE TAX RULE FOR CONSERVATION EASEMENTS.

(a) **WHERE LAND IS LOCATED.**—

(1) **IN GENERAL.**—Clause (i) of section 2031(c)(8)(A) (defining land subject to a conservation easement) is amended—

(A) by striking “25 miles” both places it appears and inserting “50 miles”; and

(B) by striking “10 miles” and inserting “25 miles”.

(2) **EFFECTIVE DATE.**—The amendments made by this subsection shall apply to estates of decedents dying after December 31, 1999.

(b) **CLARIFICATION OF DATE FOR DETERMINING VALUE OF LAND AND EASEMENT.**—

(1) **IN GENERAL.**—Section 2031(c)(2) (defining applicable percentage) is amended by adding at the end the following new sentence: “The values taken into account under the preceding sentence shall be such values as of the date of the contribution referred to in paragraph (8)(B).”.

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(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to estates of decedents dying after December 31, 1997.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

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