

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5638

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## AN ACT

To amend the Internal Revenue Code of 1986 to increase the unified credit against the estate tax to an exclusion equivalent of \$5,000,000 and to repeal the sunset provision for the estate and generation-skipping taxes, 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 “Permanent Estate Tax  
5 Relief Act of 2006”.

6 **SEC. 2. REFORM AND EXTENSION OF ESTATE TAX AFTER**  
7                   **2009.**

8       (a) RESTORATION OF UNIFIED CREDIT AGAINST  
9 GIFT TAX.—Paragraph (1) of section 2505(a) of the In-  
10 ternal Revenue Code of 1986 (relating to general rule for  
11 unified credit against gift tax), after the application of  
12 subsection (g), is amended by striking “(determined as if  
13 the applicable exclusion amount were \$1,000,000)”.

14       (b) EXCLUSION EQUIVALENT OF UNIFIED CREDIT  
15 EQUAL TO \$5,000,000.—Subsection (c) of section 2010  
16 of such Code (relating to unified credit against estate tax)  
17 is amended to read as follows:

18       “(c) APPLICABLE CREDIT AMOUNT.—

19               “(1) IN GENERAL.—For purposes of this sec-  
20 tion, the applicable credit amount is the amount of  
21 the tentative tax which would be determined under  
22 the rate schedule set forth in section 2001(c) if the  
23 amount with respect to which such tentative tax is  
24 to be computed were the applicable exclusion  
25 amount.

1           “(2) APPLICABLE EXCLUSION AMOUNT.—

2                   “(A) IN GENERAL.—For purposes of this  
3 subsection, the applicable exclusion amount is  
4 \$5,000,000.

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

9                           “(i) such dollar amount, multiplied by

10                                   “(ii) the cost-of-living adjustment de-  
11 termined under section 1(f)(3) for such  
12 calendar year by substituting ‘calendar  
13 year 2009’ for ‘calendar year 1992’ in sub-  
14 paragraph (B) thereof.

15           If any amount as adjusted under the preceding  
16 sentence is not a multiple of \$100,000, such  
17 amount shall be rounded to the nearest multiple  
18 of \$100,000.”.

19           (c) RATE SCHEDULE.—

20                   (1) IN GENERAL.—Subsection (c) of section  
21 2001 of such Code (relating to rate schedule) is  
22 amended to read as follows:

23                   “(c) RATE SCHEDULE.—The tentative tax is equal  
24 to the sum of—

1           “(1) the product of the rate specified in section  
2           1(h)(1)(C) in effect on the date of the decedent’s  
3           death multiplied by so much of the sum described in  
4           subsection (b)(1) as does not exceed \$25,000,000,  
5           and

6           “(2) the product of twice the rate specified in  
7           section 1(h)(1)(C) in effect on the date of the dece-  
8           dent’s death multiplied by so much of the sum de-  
9           scribed in subsection (b)(1) as equals or exceeds  
10          \$25,000,000.”.

11           (2)     CONFORMING     AMENDMENT.—Section  
12          2502(a) of such Code (relating computation of tax),  
13          after the application of subsection (g), is amended  
14          by adding at the end the following flush sentence:

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

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

23           (1) ESTATE TAX.—

24           (A) IN GENERAL.—Section 2001(b)(2) of  
25          such Code (relating to computation of tax) is

1 amended by striking “if the provisions of sub-  
2 section (c) (as in effect at the decedent’s  
3 death)” and inserting “if the modifications de-  
4 scribed in subsection (g)”.

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

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

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

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

18 “(A) the applicable credit amount under  
19 section 2505(a)(1), and

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

23 For purposes of paragraph (2)(A), the applicable  
24 credit amount for any calendar year before 1998 is  
25 the amount which would be determined under sec-

1       tion 2010(c) if the applicable exclusion amount were  
2       the dollar amount under section 6018(a)(1) for such  
3       year.”.

4           (2) GIFT TAX.—Section 2505(a) of such Code  
5       (relating to unified credit against gift tax), after the  
6       application of subsection (g), is amended by adding  
7       at the end the following new flush sentence:

8       “For purposes of applying paragraph (2) for any calendar  
9       year, the rates of tax used in computing the tax under  
10      section 2502(a)(2) for such calendar year shall, in lieu of  
11      the rates of tax in effect for preceding calendar periods,  
12      be used in determining the amounts allowable as a credit  
13      under this section 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 TO TITLE V OF  
20 EGTRRA.—Section 901 of the Economic Growth and  
21 Tax Relief Reconciliation Act of 2001 shall not  
22 apply to title V 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. 3. 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 2(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  
7           \$5,000,000.

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

12                   “(i) such dollar amount, multiplied by

13                           “(ii) the cost-of-living adjustment de-  
14                           termined under section 1(f)(3) for such  
15                           calendar year by substituting ‘calendar  
16                           year 2009’ for ‘calendar year 1992’ in sub-  
17                           paragraph (B) thereof.

18          If any amount as adjusted under the preceding  
19          sentence is not a multiple of \$100,000, such  
20          amount shall be rounded to the nearest multiple  
21          of \$100,000.

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

1           “(A) the basic exclusion amount, or

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

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

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

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

16           “(6) SPECIAL RULES.—

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

1           may be made under this subparagraph if such  
2           return is filed after the time prescribed by law  
3           (including extensions) for filing such return.

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

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

19          (b) CONFORMING AMENDMENTS.—

20                 (1) Paragraph (1) of section 2505(a) of such  
21          Code, as amended by section 2, is amended to read  
22          as follows:

23                 “(1) the applicable credit amount under section  
24          2010(c) which would apply if the donor died as of  
25          the end of the calendar year, reduced by”.

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

4           (3) Section 6018(a)(1) of such Code, after the  
5           application of section 2(g), is amended by striking  
6           “applicable exclusion amount” and inserting “basic  
7           exclusion 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.

12       **SEC. 4. DEDUCTION FOR QUALIFIED TIMBER GAIN.**

13          (a) IN GENERAL.—Part I of subchapter P of chapter  
14          1 of the Internal Revenue Code of 1986 is amended by  
15          adding at the end the following new section:

16       **“SEC. 1203. DEDUCTION FOR QUALIFIED TIMBER GAIN.**

17          “(a) IN GENERAL.—In the case of a taxpayer which  
18          elects the application of this section for a taxable year,  
19          there shall be allowed a deduction against gross income  
20          equal to 60 percent of the lesser of—

21               “(1) the taxpayer’s qualified timber gain for  
22               such year, or

23               “(2) the taxpayer’s net capital gain for such  
24               year.

1       “(b) QUALIFIED TIMBER GAIN.—For purposes of  
2 this section, the term ‘qualified timber gain’ means, with  
3 respect to any taxpayer for any taxable year, the excess  
4 (if any) of—

5               “(1) the sum of the taxpayer’s gains described  
6 in subsections (a) and (b) of section 631 for such  
7 year, over

8               “(2) the sum of the taxpayer’s losses described  
9 in such subsections for such year.

10       “(c) SPECIAL RULES FOR PASS-THRU ENTITIES.—  
11 In the case of any qualified timber gain of a pass-thru  
12 entity (as defined in section 1(h)(10))—

13               “(1) the election under this section shall be  
14 made separately by each taxpayer subject to tax on  
15 such gain, and

16               “(2) the Secretary may prescribe such regula-  
17 tions as are appropriate to apply this section to such  
18 gain.

19       “(d) TERMINATION.—No disposition of timber after  
20 December 31, 2008, shall be taken into account under  
21 subsection (b).”.

22       (b) COORDINATION WITH MAXIMUM CAPITAL GAINS  
23 RATES.—

1           (1) TAXPAYERS OTHER THAN CORPORA-  
2           TIONS.—Paragraph (2) of section 1(h) of such Code  
3           is amended to read as follows:

4           “(2) REDUCTION OF NET CAPITAL GAIN.—For  
5           purposes of this subsection, the net capital gain for  
6           any taxable year shall be reduced (but not below  
7           zero) by the sum of—

8                   “(A) the amount which the taxpayer takes  
9                   into account as investment income under sec-  
10                  tion 163(d)(4)(B)(iii), and

11                  “(B) in the case of a taxable year with re-  
12                  spect to which an election is in effect under sec-  
13                  tion 1203, the lesser of—

14                           “(i) the amount described in para-  
15                           graph (1) of section 1203(a), or

16                           “(ii) the amount described in para-  
17                           graph (2) of such section.”.

18           (2) CORPORATIONS.—Section 1201 of such  
19           Code is amended by redesignating subsection (b) as  
20           subsection (c) and inserting after subsection (a) the  
21           following new subsection:

22           “(b) QUALIFIED TIMBER GAIN NOT TAKEN INTO AC-  
23           COUNT.—For purposes of this section, in the case of a  
24           corporation with respect to which an election is in effect  
25           under section 1203, the net capital gain for any taxable

1 year shall be reduced (but not below zero) by the corpora-  
2 tion's qualified timber gain (as defined in section  
3 1203(b)).”.

4 (c) DEDUCTION ALLOWED WHETHER OR NOT INDI-  
5 VIDUAL ITEMIZES OTHER DEDUCTIONS.—Subsection (a)  
6 of section 62 of such Code is amended by inserting before  
7 the last sentence the following new paragraph:

8 “(21) QUALIFIED TIMBER GAINS.—The deduc-  
9 tion allowed by section 1203.”.

10 (d) DEDUCTION ALLOWED IN COMPUTING AD-  
11 JUSTED CURRENT EARNINGS.—Subparagraph (C) of sec-  
12 tion 56(g)(4) of such Code is amended by adding at the  
13 end the following new clause:

14 “(vii) DEDUCTION FOR QUALIFIED  
15 TIMBER GAIN.—Clause (i) shall not apply  
16 to any deduction allowed under section  
17 1203.”.

18 (e) DEDUCTION ALLOWED IN COMPUTING TAXABLE  
19 INCOME OF ELECTING SMALL BUSINESS TRUSTS.—Sub-  
20 paragraph (C) of section 641(c)(2) of such Code is amend-  
21 ed by inserting after clause (iii) the following new clause:

22 “(iv) The deduction allowed under  
23 section 1203.”.

24 (f) CONFORMING AMENDMENTS.—

1           (1) Subparagraph (B) of section 172(d)(2) of  
2 such Code is amended to read as follows:

3           “(B) the exclusion under section 1202 and  
4 the deduction under section 1203 shall not be  
5 allowed.”.

6           (2) Paragraph (4) of section 642(c) of such  
7 Code is amended by striking the first sentence and  
8 inserting the following: “To the extent that the  
9 amount otherwise allowable as a deduction under  
10 this subsection consists of gain described in section  
11 1202(a) or qualified timber gain (as defined in sec-  
12 tion 1203(b)), proper adjustment shall be made for  
13 any exclusion allowable to the estate or trust under  
14 section 1202 and for any deduction allowable to the  
15 estate or trust under section 1203.”.

16           (3) Paragraph (3) of section 643(a) of such  
17 Code is amended by striking the last sentence and  
18 inserting the following: “The exclusion under section  
19 1202 and the deduction under section 1203 shall not  
20 be taken into account.”.

21           (4) Subparagraph (C) of section 643(a)(6) of  
22 such Code is amended to read as follows:

23           “(C) Paragraph (3) shall not apply to a  
24 foreign trust. In the case of such a trust—

1           “(i) there shall be included gains from  
2           the sale or exchange of capital assets, re-  
3           duced by losses from such sales or ex-  
4           changes to the extent such losses do not  
5           exceed gains from such sales or exchanges,  
6           and

7           “(ii) the deduction under section 1203  
8           shall not be taken into account.”.

9           (5) Paragraph (4) of section 691(c) of such  
10          Code is amended by inserting “1203,” after  
11          “1202,”.

12          (6) Paragraph (2) of section 871(a) of such  
13          Code is amended by striking “section 1202” and in-  
14          serting “sections 1202 and 1203”.

15          (7) The table of sections for part I of sub-  
16          chapter P of chapter 1 of such Code is amended by  
17          adding at the end the following new item:

“Sec. 1203. Deduction for qualified timber gain.”.

18          (g) EFFECTIVE DATE.—

19           (1) IN GENERAL.—The amendments made by  
20           this section shall apply to taxable years ending after  
21           the date of the enactment of this Act.

22           (2) TAXABLE YEARS WHICH INCLUDE DATE OF  
23           ENACTMENT.—In the case of any taxable year which  
24           includes the date of the enactment of this Act, for  
25           purposes of the Internal Revenue Code of 1986, the

1 taxpayer's qualified timber gain shall not exceed the  
2 excess that would be described in section 1203(b) of  
3 such Code, as added by this section, if only disposi-  
4 tions of timber after such date were taken into ac-  
5 count.

Passed the House of Representatives June 22, 2006.

Attest:

*Clerk.*

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

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# H. R. 5638

## AN ACT

To amend the Internal Revenue Code of 1986 to increase the unified credit against the estate tax to an exclusion equivalent of \$5,000,000 and to repeal the sunset provision for the estate and generation-skipping taxes, and for other purposes.