

117TH CONGRESS
1ST SESSION

H. R. 2286

To amend the Internal Revenue Code of 1986 to treat property transferred by gift or at death as sold for fair market value, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 2021

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

A BILL

To amend the Internal Revenue Code of 1986 to treat property transferred by gift or at death as sold for fair market value, 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. DEEMED REALIZATION OF CAPITAL GAINS AT**
4 **TIME OF GIFT OR DEATH.**

5 (a) TREATMENT AS SALE.—

6 (1) IN GENERAL.—Part IV of subchapter P of
7 chapter 1 of the Internal Revenue Code of 1986 is
8 amended by adding at the end the following new sec-
9 tion:

1 **“SEC. 1261. GAINS FROM CERTAIN PROPERTY TRANS-**
2 **FERRED BY GIFT OR UPON DEATH.**

3 “(a) IN GENERAL.—Any property which is trans-
4 ferred by gift or at death shall be treated as sold for its
5 fair market value on the date of such gift or death.

6 “(b) EXCEPTIONS.—

7 “(1) SPOUSE OR SURVIVING SPOUSE.—This sec-
8 tion shall not apply to a transfer of property to the
9 transferor’s spouse or surviving spouse if such
10 spouse or surviving spouse is a citizen of the United
11 States.

12 “(2) CERTAIN TANGIBLE PERSONAL PROP-
13 erty.—In the case of tangible personal property,
14 this section shall apply only to the following:

15 “(A) Property held in connection with a
16 trade or business.

17 “(B) Property held for investment.

18 “(C) Collectibles (as defined in section
19 408(m) (determined without regard to para-
20 graph (3) thereof)).

21 “(3) CHARITABLE CONTRIBUTIONS.—This sec-
22 tion shall not apply to any transfer to an organiza-
23 tion described in section 170(c).

24 “(c) SPECIAL RULES FOR TRUSTS.—

25 “(1) CERTAIN GRANTOR TRUSTS.—In the case
26 of any property which—

1 “(A) is held in a trust of which the grantor
2 or another person is treated as the owner under
3 subpart E of part I of subchapter J of chapter
4 1, and

5 “(B) is includible in the gross estate of the
6 grantor or such other person under chapter 11,
7 such property shall be treated as transferred under
8 subsection (a) when the grantor or such other per-
9 son ceases to be treated as the owner of such prop-
10 erty, or such property ceases to be includible in the
11 gross estate of the grantor or such other person (in-
12 cluding by reason of the death of the grantor or
13 such other person, or the distribution of such prop-
14 erty to a person other than the grantor or such
15 other person).

16 “(2) OTHER TRUSTS.— In the case of any
17 property held in trust and not described in para-
18 graph (1), such property shall be treated as trans-
19 ferred under subsection (a) upon the transfer of
20 such property to a trust.

21 “(3) TRANSFERS FROM AND MODIFICATIONS OF
22 TRUSTS.—Any modification of the direct or indirect
23 beneficiaries of a trust (or the rights of the bene-
24 ficiaries to trust assets) or any transfer or distribu-
25 tion of trust assets (including to another trust) shall

1 be treated as a transfer described in subsection (a),
2 unless the Secretary determines that any such trans-
3 fer or modification is of a type which does not have
4 the potential for tax avoidance.

5 “(4) DYNASTY TRUSTS.—

6 “(A) IN GENERAL.—Any property that is
7 continuously held in trust and is not subject to
8 subsection (a) for a period of 30 years shall be
9 treated as transferred pursuant to subsection
10 (a) at the end of such 30 year period.

11 “(B) PROPERTY HELD IN TRUST ON THE
12 EFFECTIVE DATE.—Any property held in trust
13 on January 1, 2022, that has been continuously
14 held in trust for more than 30 years as of such
15 date shall be treated as transferred pursuant to
16 subsection (a) on such date.

17 “(C) CERTAIN GRANTOR TRUSTS AND
18 QUALIFYING SPOUSAL TRUSTS.—For purposes
19 of this paragraph, property shall not be treated
20 as held in trust during any period when such
21 property is held by a trust described in para-
22 graphs (1)(A) and (1)(B), or when such prop-
23 erty is held by a qualifying spousal trust.

24 “(5) QUALIFYING SPOUSAL TRUST.—

1 “(A) IN GENERAL.—Paragraphs (1), (2),
2 (3), and (4) shall not apply in the case of a
3 qualifying spousal trust, and the property of
4 such trust shall be treated as transferred under
5 subsection (a)—

6 “(i) upon the death of the spousal
7 beneficiary,

8 “(ii) upon the distribution of such
9 property from such trust to any person
10 other than the spousal beneficiary who is a
11 citizen of the United States, or

12 “(iii) at such time such property
13 ceases to be held by a qualifying spousal
14 trust.

15 “(B) QUALIFYING SPOUSAL TRUST.—For
16 purposes of this section, a trust is a qualifying
17 spousal trust if—

18 “(i) such trust is a qualified domestic
19 trust (as defined in section 2056A),

20 “(ii) the sole current income bene-
21 ficiary of such trust is the spouse or sur-
22 viving spouse of the transferor of property
23 to such trust, and

24 “(iii) such transferor (during the life
25 of such transferor) or such spouse or sur-

1 viving spouse has the power to appoint
2 over the entire trust.

3 “(d) EXCLUSION OF CERTAIN GIFTS.—In the case
4 of gifts made to any individual during the taxable year,
5 so much of the dollar amount of such gifts to such indi-
6 vidual as does not exceed the amount in effect for the cal-
7 endar year under section 2503(b) in which the taxable
8 year begins shall not be taken into account under sub-
9 section (a) for such taxable year.

10 “(e) REGULATIONS.—The Secretary shall prescribe
11 such regulations as may be necessary to prevent the avoid-
12 ance of the purposes of this section.”.

13 (2) CLERICAL AMENDMENT.—The table of sec-
14 tions for part IV of subchapter P of chapter 1 of
15 such Code is amended by adding at the end the fol-
16 lowing new item:

“Sec. 1261. Gains from certain property transferred by gift or upon death.”.

17 (b) COORDINATION OF RELATED PARTY LOSS
18 RULES.—Section 267 of such Code is amended by adding
19 at the end the following new subsection:

20 “(h) PROPERTY TREATED AS SOLD AT DEATH.—
21 Subsection (a)(1) shall not apply to any property that is
22 transferred at death and treated as sold under section
23 1261.”.

24 (c) TREATMENT OF BASIS FOR GIFTS AND BE-
25 QUESTS TO WHICH TAX APPLIES.—

1 (1) ELIMINATION OF CARRYOVER BASIS FOR
2 GIFTS.—Section 1015(a) of such Code is amended—

3 (A) by striking “If the property” and in-
4 serting the following:

5 “(1) GIFTS BEFORE JANUARY 1, 2022.—If the
6 property”;

7 (B) by inserting “, and before January 1,
8 2022” after “after December 31, 1920”; and

9 (C) by adding at the end the following new
10 paragraph:

11 “(2) GIFTS AFTER DECEMBER 31, 2021.—If the
12 property was acquired by gift after December 31,
13 2021, the basis shall be the fair market value of
14 such property at the time of the gift.”.

15 (2) RULES FOR TRANSFERS BETWEEN
16 SPOUSES.—

17 (A) IN GENERAL.—Section 1041(b) of
18 such Code is amended to read as follows:

19 “(b) TRANSFEREE HAS TRANSFEROR’S BASIS.—In
20 the case of any transfer of property described in sub-
21 section (a), the basis of the transferee in the property shall
22 be the adjusted basis of the transferor.”.

23 (B) TRANSFERS AT DEATH.—Section
24 1041(a) of such Code is amended by inserting

1 “(including at death)” after “transfer of prop-
 2 erty”.

3 (C) CONFORMING AMENDMENTS.—

4 (i) Section 1014 of such Code is
 5 amended by adding at the end the fol-
 6 lowing new subsection:

7 “(g) PROPERTY ACQUIRED FROM DECEDENT
 8 SPOUSE.—In the case of property which passes from the
 9 decedent to (or in trust for the benefit of) the decedent’s
 10 surviving spouse in a transfer described in section
 11 1041(a)(1), the basis of such property in the hands of the
 12 transferee shall be determined under section 1041(b) and
 13 not this section.”, and

14 (ii) Section 1015(e) of such Code is
 15 amended by striking “1041(b)(2)” and in-
 16 serting “1041(b)”.

17 (3) BASIS MUST BE CONSISTENT WITH GAINS
 18 RECOGNIZED IN DEEMED REALIZATION.—

19 (A) PROPERTY ACQUIRED FROM DECE-
 20 DENT.—Section 1014 of such Code, as amend-
 21 ed by the preceding provisions of this Act, is
 22 amended by adding at the end the following
 23 new subsection:

24 “(h) BASIS MUST BE CONSISTENT WITH GAINS
 25 RECOGNIZED IN DEEMED REALIZATION.—The basis of

1 any property to which subsection (a) applies shall not ex-
2 ceed the amount for which the property was treated as
3 sold under section 1261.”.

4 (B) PROPERTY ACQUIRED BY GIFT.—Sec-
5 tion 1015 of such Code is amended by adding
6 at the end the following new subsection:

7 “(f) BASIS MUST BE CONSISTENT WITH GAINS REC-
8 OGNIZED IN DEEMED REALIZATION.—The basis of any
9 property to which subsection (a)(2) applies shall not ex-
10 ceed the amount for which the property was treated as
11 sold under section 1261.”.

12 (d) CONFORMING AMENDMENTS.—

13 (1) Section 7477(a) of such Code is amended
14 by striking “chapter 12” and inserting “chapter 1 or
15 12”.

16 (2) Section 7517(a) of such Code is amended
17 by striking “chapter 11” and inserting “chapter 1,
18 11”.

19 (e) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to transfers by gift (including
21 transfers treated as gifts by reason of the amendments
22 made by this section), or at death by decedents dying,
23 after December 31, 2021.

1 **SEC. 2. EXCLUSION OF CERTAIN AMOUNTS OF REALIZED**
2 **CAPITAL GAIN.**

3 (a) IN GENERAL.—Part III of subchapter B of chap-
4 ter 1 of the Internal Revenue Code of 1986 is amended
5 by inserting before section 140 the following new section:

6 **“SEC. 139I. EXCLUSION OF GAIN FROM TRANSFERS OF AP-**
7 **PRECIATED ASSETS AT DEATH.**

8 “(a) IN GENERAL.—Gross income shall not include
9 so much of the net capital gain for the taxable year from
10 transfers at death to which 1261(a) applies as does not
11 exceed \$1,000,000.

12 “(b) INFLATION ADJUSTMENT.—

13 “(1) IN GENERAL.—In the case of any taxable
14 year beginning after 2022, the \$1,000,000 amount
15 in subsection (a) shall be increased by an amount
16 equal to—

17 “(A) such dollar amount, multiplied by

18 “(B) the cost-of-living adjustment deter-
19 mined under section 1(f)(3) for the calendar
20 year in which the taxable year begins, deter-
21 mined by substituting in subparagraph (A)(ii)
22 thereof ‘calendar year 2021’ for ‘calendar year
23 2016’.

24 “(2) ROUNDING.—If the dollar amount in sub-
25 section (a), after being increased under paragraph

1 (1), is not a multiple of \$10,000, such amount shall
 2 be rounded to the next lowest multiple of \$10,000.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
 4 for part III of subchapter B of chapter 1 of such Code
 5 is amended by inserting after section 139H the following
 6 new item:

“Sec. 139I. Exclusion of gain from transfers of appreciated assets at death.”.

7 (c) EFFECTIVE DATE.—The amendments made by
 8 this section shall apply to transfers at death by decedents
 9 dying after December 31, 2021, in taxable years beginning
 10 after such date.

11 **SEC. 3. INFORMATION REPORTING OF CERTAIN GIFTS.**

12 (a) IN GENERAL.—Subpart B of part III of sub-
 13 chapter A of chapter 61 of the Internal Revenue Code of
 14 1986 is amended by adding at the end the following new
 15 section:

16 **“SEC. 6050Z. RETURNS RELATING TO CERTAIN GIFTS AND** 17 **BEQUESTS.**

18 “(a) IN GENERAL.—In the case of an applicable
 19 transfer, the individual making such gift, or the executor
 20 in the case of a transfer at death, shall furnish to the
 21 Secretary the following information:

22 “(1) The name and taxpayer identification
 23 number of the person to whom such transfer was
 24 made.

25 “(2) A description of the property transferred.

1 “(3) The fair market value of the property
2 transferred and the basis of such property to the
3 transferee.

4 “(b) APPLICABLE TRANSFER.—

5 “(1) IN GENERAL.—For purposes of this sec-
6 tion, the term ‘applicable transfer’ means—

7 “(A) any gift (other than a covered secu-
8 rity (as defined in section 6045(g)(3))) which is
9 taken into account under section 1261, and

10 “(B) so much of any transfer at death
11 (other than such a covered security) which is so
12 taken into account under section 1261 and the
13 gain from which is includible in gross income
14 for the taxable year of such transfer.

15 “(2) DE MINIMIS.—

16 “(A) GIFTS.—For gifts not exceeding the
17 limitation for such year under section 2503(b)
18 and not taken into account under section 1261,
19 see subsection (d) thereof.

20 “(B) TRANSFERS AT DEATH.—For amount
21 of gain excluded from gross income in case of
22 a transfer at death, see section 139I(a).

23 “(c) STATEMENTS TO BE FURNISHED TO PERSONS
24 WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—

25 Every person required to make a return under subsection

1 (a) shall furnish to each person whose name is required
 2 to set forth in such return a written statement showing
 3 the information described in subsection (a).

4 “(d) TIMING.—The returns and statements required
 5 under this section shall be furnished at such time and in
 6 such form and manner as the Secretary shall by regulation
 7 prescribe.”.

8 (b) CLERICAL AMENDMENT.—The table of sections
 9 for subpart B of part III of subchapter A of chapter 61
 10 of such Code is amended by adding at the end the fol-
 11 lowing new item:

“Sec. 6050Z. Returns relating to certain gifts.”.

12 (c) EFFECTIVE DATE.—The amendments made by
 13 this section shall apply to transfers after December 31,
 14 2021, in taxable years beginning after such date.

15 **SEC. 4. EXTENSION OF TIME FOR PAYMENT OF TAX.**

16 (a) EXTENSION OF TIME.—

17 (1) IN GENERAL.—Subchapter B of chapter 62
 18 of the Internal Revenue Code of 1986 is amended by
 19 adding at the end the following new section:

20 **“SEC. 6168. EXTENSION OF TIME FOR PAYMENT OF CAP-**
 21 **ITAL GAINS ON CERTAIN ASSETS REALIZED**
 22 **BY REASON OF DEATH.**

23 “(a) 7-YEAR INSTALLMENT PAYMENT.—

24 “(1) IN GENERAL.—In the case of any gain
 25 with respect to eligible property that is recognized

1 under section 1261 by reason of the death of the
2 taxpayer, the taxpayer may elect to pay part or all
3 of tax imposed on such gain in 2 or more (but not
4 exceeding 7) equal installments.

5 “(2) DATE FOR PAYMENT OF INSTALLMENTS.—

6 If an election is made under paragraph (1), the first
7 installment shall be paid not later than the date on
8 which the tax for the taxable year in which the gain
9 described in paragraph (1) occurs is due, and each
10 succeeding installment shall be paid on or before the
11 date which is 1 year after the date prescribed by this
12 paragraph for payment of the preceding installment.

13 “(b) ELIGIBLE CAPITAL ASSET.—For purposes of
14 this section, the term ‘eligible property’ means any prop-
15 erty other than personal property of a type which is ac-
16 tively traded (within the meaning of section 1092(d)(1)).

17 “(c) PORTION OF TAX ELIGIBLE.—The amount of
18 tax to which this section applies shall not exceed the excess
19 of—

20 “(1) the tax computed under chapter 1 (deter-
21 mined after application of section 1261), over

22 “(2) the tax computed under chapter 1 (deter-
23 mined without regard to section 1261).

24 “(d) ELECTION.—Any election under subsection (a)
25 shall be made not later than the time prescribed by section

1 6072 for filing the return of tax imposed under chapter
2 1 (including extensions thereof), and shall be made in such
3 manner as the Secretary shall by regulations prescribe. If
4 an election under subsection (a) is made, the provisions
5 of this subtitle shall apply as though the Secretary were
6 extending the time for payment of the tax.

7 “(e) PRORATION OF DEFICIENCY TO INSTALL-
8 MENTS.—If an election is made under subsection (a) to
9 pay any part of the tax imposed under chapter 1 in install-
10 ments and a deficiency has been assessed, the deficiency
11 shall (subject to the limitation provided by subsection
12 (a)(2)) be prorated to the installments payable under sub-
13 section (a). The part of the deficiency so prorated to any
14 installment the date for payment of which has not arrived
15 shall be collected at the same time as, and as a part of,
16 such installment. The part of the deficiency so prorated
17 to any installment the date for payment of which has ar-
18 rived shall be paid upon notice and demand from the Sec-
19 retary. This subsection shall not apply if the deficiency
20 is due to negligence, to intentional disregard of rules and
21 regulations, or to fraud with intent to evade tax.

22 “(f) TIME FOR PAYMENT OF INTEREST.—If the time
23 for payment of any amount of tax has been extended
24 under this section, interest payable under section 6601 on

1 any unpaid portion shall be paid annually at the same time
 2 as, and as part of, each installment payment of the tax.

3 “(g) REGULATIONS.—The Secretary shall prescribe
 4 such regulations as may be necessary to the application
 5 of this section.

6 “(h) CROSS-REFERENCES.—

7 “(1) SECURITY.—For authority of the Sec-
 8 retary to require security in the case of an extension
 9 under this section, see section 6165.

10 “(2) INTEREST.—For provisions relating to in-
 11 terest on tax payable in installments under this sec-
 12 tion, see subsection (k) of section 6601.”.

13 (2) COORDINATION WITH TRANSFEREE LIABIL-
 14 ITY.—Section 6109 of such Code is amended by re-
 15 designating subsections (g), (h), and (i) as sub-
 16 sections (h), (i), and (j), respectively, and by insert-
 17 ing after subsection (f) the following new subsection:

18 “(g) PERIOD OF ASSESSMENT IN CASE OF EXTEN-
 19 SION OF TIME FOR PAYMENT OF TAX UNDER SECTION
 20 1261.—For purposes of subsection (e), the period of limi-
 21 tation for assessment against the transferor of any tax im-
 22 posed under section 1261 the payment of which is ex-
 23 tended under section 6168 shall not be treated as expiring
 24 earlier than the due date for the last payment under (a)(2)
 25 of such section.”.

1 (3) CLERICAL AMENDMENT.—The table of sec-
 2 tions for subpart B of chapter 62 of such Code is
 3 amended by adding at the end the following new
 4 item:

“Sec. 6168. Extension of time for payment of capital gains on certain assets
 realized by reason of death.”.

5 (b) INTEREST.—Section 6601 of such Code is amend-
 6 ed by redesignating subsection (k) as subsection (l) and
 7 by inserting after subsection (j) the following new sub-
 8 section:

9 “(k) SPECIAL RATE FOR TAX EXTENDED UNDER
 10 SECTION 6168.—If the time for payment of an amount
 11 of tax imposed by section 1261 is extended as provided
 12 in section 6168, in lieu of the annual rate provided by
 13 subsection (a), interest shall be paid at a rate equal to
 14 45 percent of the annual rate provided by subsection (a).
 15 For purposes of this subsection, the amount of any defi-
 16 ciency which is prorated to installments payable under sec-
 17 tion 6168 shall be treated as an amount of tax payable
 18 in installments under such section.”.

19 (c) EFFECTIVE DATE.—The amendments made by
 20 this section shall apply to taxable years beginning after
 21 December 31, 2021.

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