

**DESCRIPTION OF H.R. 1104,
THE “FAIR TREATMENT FOR ALL DONATIONS ACT”**

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on March 25, 2015

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of H.R. 1104, the “Fair Treatment for All Donations Act,” on March 25, 2015. This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 1104, the “Fair Treatment for All Donations Act”* (JCX-65-15), March 24, 2015. This document can also be found on the Joint Committee on Taxation website at www.jct.gov.

A. Deduction from Gift Tax for Gifts Made to Certain Exempt Organizations

Present Law

Overview

The Code imposes a tax for each calendar year on the transfer of property by gift during such year by any individual, whether a resident or nonresident of the United States.² The amount of taxable gifts for a calendar year is determined by subtracting from the total amount of gifts made during the year: (1) the gift tax annual exclusion (described below); and (2) allowable deductions.

Gift tax for the current taxable year is determined by: (1) computing a tentative tax on the combined amount of all taxable gifts for the current and all prior calendar years using the common gift tax and estate tax rate table; (2) computing a tentative tax only on all prior-year gifts; (3) subtracting the tentative tax on prior-year gifts from the tentative tax computed for all years to arrive at the portion of the total tentative tax attributable to current-year gifts; and, finally, (4) subtracting the amount of unified credit not consumed by prior-year gifts.

Unified credit (exemption) and tax rates

Unified credit

A unified credit is available with respect to taxable transfers by gift and at death.³ The unified credit offsets tax, computed using the applicable estate and gift tax rates, on a specified amount of transfers, referred to as the applicable exclusion amount, or exemption amount. The exemption amount was set at \$5 million for 2011 and is indexed for inflation for later years.⁴ For 2015, the inflation-indexed exemption amount is \$5.43 million.⁵ Exemption used during life to offset taxable gifts reduces the amount of exemption that remains at death to offset the value of a decedent's estate. An election is available under which exemption that is not used by a decedent may be used by the decedent's surviving spouse (exemption portability).

² Sec. 2501(a).

³ Sec. 2010.

⁴ For 2011 and later years, the gift and estate taxes were reunified, meaning that the gift tax exemption amount was increased to equal the estate tax exemption amount.

⁵ For 2015, the \$5.43 exemption amount results in a unified credit of \$2,117,800, after applying the applicable rates set forth in section 2001(c).

Common tax rate table

A common tax-rate table with a top marginal tax rate of 40 percent is used to compute gift tax and estate tax. The 40-percent rate applies to transfers in excess of \$1 million (to the extent not exempt). Because the exemption amount currently shields the first \$5.43 million in gifts and bequests from tax, transfers in excess of the exemption amount generally are subject to tax at the highest marginal 40-percent rate.

Transfers by gift

The gift tax applies to a transfer by gift regardless of whether: (1) the transfer is made outright or in trust; (2) the gift is direct or indirect; or (3) the property is real or personal, tangible or intangible.⁶ For gift tax purposes, the value of a gift of property is the fair market value of the property at the time of the gift.⁷ Where property is transferred for less than full consideration, the amount by which the value of the property exceeds the value of the consideration is considered a gift and is included in computing the total amount of a taxpayer's gifts for a calendar year.⁸

For a gift to occur, a donor generally must relinquish dominion and control over donated property. For example, if a taxpayer transfers assets to a trust established for the benefit of his or her children, but retains the right to revoke the trust, the taxpayer may not have made a completed gift, because the taxpayer has retained dominion and control over the transferred assets. A completed gift made in trust, on the other hand, often is treated as a gift to the trust beneficiaries.

By reason of statute, certain transfers are not treated as transfers by gift for gift tax purposes. These include, for example, certain transfers for educational and medical purposes⁹ and transfers to section 527 political organizations.¹⁰

Under present law, there is no explicit exception from the gift tax for a transfer to a tax-exempt organization described in section 501(c)(4) (generally, social welfare organizations), 501(c)(5) (generally, labor and certain other organizations), or section 501(c)(6) (generally, trade associations and business leagues).

⁶ Sec. 2511(a).

⁷ Sec. 2512(a).

⁸ Sec. 2512(b).

⁹ Sec. 2503(e).

¹⁰ Sec. 2501(a)(4).

Taxable gifts

As stated above, the amount of a taxpayer's taxable gifts for the year is determined by subtracting from the total amount of the taxpayer's gifts for the year the gift tax annual exclusion and any available deductions.

Gift tax annual exclusion

Under present law, donors of lifetime gifts are provided an annual exclusion of \$14,000 per donee in 2015 (indexed for inflation from the 1997 annual exclusion amount of \$10,000) for gifts of present interests in property during the taxable year.¹¹ If the non-donor spouse consents to split the gift with the donor spouse, then the annual exclusion is \$28,000 per donee in 2015. In general, unlimited transfers between spouses are permitted without imposition of a gift tax. Special rules apply to the contributions to a qualified tuition program ("529 Plan") including an election to treat a contribution that exceeds the annual exclusion as a contribution made ratably over a five-year period beginning with the year of the contribution.¹²

Transfers between spouses

A 100-percent marital deduction generally is permitted for the value of property transferred between spouses.¹³

Transfers to charity

Contributions to section 501(c)(3) charitable organizations and certain other organizations may be deducted from the value of a gift for Federal gift tax purposes.¹⁴ The effect of the deduction generally is to remove the full fair market value of assets transferred to charity from the gift tax base; unlike the income tax charitable deduction, there are no percentage limits on the deductible amount. A charitable contribution of a partial interest in property, such as a remainder or future interest, generally is not deductible for gift tax purposes.¹⁵

Description of Proposal

Under the proposal, a transfer to a tax-exempt organization described in section 501(c)(4), 501(c)(5), or 501(c)(6) is deductible in computing taxable gifts for a calendar year.

¹¹ Sec. 2503(b).

¹² Sec. 529(c)(2).

¹³ Sec. 2523.

¹⁴ Sec. 2522.

¹⁵ Sec. 2522(c)(2).

Effective Date

The proposal is effective for gifts made after the date of enactment. The proposal shall not be construed to create an inference with respect to whether any transfer of property to such an organization, whether made before, on or after the date of enactment, is a transfer by gift for gift tax purposes.

B. Estimated Revenue Effects

The proposal is estimated to have no effect on Federal fiscal year budget receipts for the period 2015-2025.