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## [H.R. 1105, the Death Tax Repeal Act of 2015](#)

### FLOOR SITUATION

On Wednesday, April 15, 2015, the House will consider [H.R. 1105](#), the *Death Tax Repeal Act of 2015*, under a closed rule. H.R. 1105 was introduced on February 26, 2015 by Rep. Kevin Brady (R-TX) and was referred to the Committee on Ways and Means, which ordered the bill reported, as amended, by a vote of 22-10 on March 25, 2015.

### SUMMARY

H.R. 1105 amends the Internal Revenue Code of 1986 to repeal the estate and generation transfer skipping tax and reduce the highest gift tax rate from 40 percent to 35 percent, effective for decedents dying and gifts made on or after the date of enactment.

H.R. 1105 also provides for a transition rule for assets placed in a qualified domestic trust by a decedent who died before the date of enactment. The rule provides that an estate tax will not be imposed on: (1) distributions before the death of a surviving spouse from the trust more than ten years after the date of enactment; or (2) assets remaining in the qualified domestic trust upon the death of the surviving spouse.

### BACKGROUND

Under current law, the estate tax, commonly referred to as the death tax, applies to the transfer of an estate at death to a decedent who is a citizen or resident of the United States. The estate tax liability is determined by subtracting certain deductions<sup>1</sup> from the total gross value of the estate.<sup>2</sup> Estate transfers with combined gross assets and prior taxable gifts exceeding \$5,430,000 (the current amount of the “Unified Credit”)<sup>3</sup> are required to file an estate tax return with the IRS.<sup>4</sup> Estate tax liability in excess of \$5,430,000 is generally subject to the highest marginal rate of 40 percent. H.R. 1105 repeals the estate tax effective on or after the date of enactment and provides for a specified

<sup>1</sup> Allowable deductions in determining estate tax liability include: marital and charitable transfers, state death taxes, mortgages and debt, funeral expenses, and other estate related administrative expenses. See [House Report 114-52](#) at 8.

<sup>2</sup> A decedent’s gross estate value includes the date-of-death fair market value of a decedent’s property, real or personal, tangible or intangible, wherever situated. See [26 U.S.C. 2031\(a\)](#).

<sup>3</sup> The “Unified Credit” is the most significant credit allowed for estate tax purposes. In 2015, the unified credit is \$2,117,800, which has the effect of exempting \$5.43 million in transfers by estate from tax liability. See [JCT Report](#) at 6.

<sup>4</sup> <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Estate-Tax>

transition period for assets placed in a qualified domestic trust by a decedent who died before the date of enactment.<sup>5</sup>

Under current law, the generation-skipping transfer tax is a separate tax that can apply in addition to either the gift tax or the estate tax on gifts in which the beneficiary is more than one generation younger than the transferor. The tax rate and exemption amount for generation-skipping transfer tax purposes, however, are set by reference to the estate tax rules. The generation skipping transfer tax is currently imposed using a flat rate equal to the highest estate tax rate of 40 percent. The tax is imposed on cumulative generation-skipping transfers in excess of the generation-skipping transfer tax exemption amount in effect for the year of the transfer.<sup>6</sup> H.R. 1105 repeals the generation-skipping transfer taxes for transfers made on or after the date of enactment.

Under current law, donors of lifetime gifts are provided an annual exclusion of \$14,000 per donee in 2015 for gifts of present interests in property during the taxable year. 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.<sup>7</sup> H.R. 1105 does not amend the rules for determining the income tax basis of assets acquired by gift, but reduces the highest gift tax rate from 40 percent to 35 percent.<sup>8</sup>

## **COST**

[The Joint Committee on Taxation \(JCT\) estimates](#) that enacting H.R. 1105 would reduce revenues by approximately \$269 billion over the 2015 to 2025 period.

## **STAFF CONTACT**

For questions or further information contact the House Republican Policy Committee at 6-5539.

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<sup>5</sup> See [House Report 114-52](#) at 4.

<sup>6</sup> Id. at 12.

<sup>7</sup> See [26 U.S.C. 2503\(b\)](#)

<sup>8</sup> See [House Report 114-52](#) at 4.