

119TH CONGRESS
2D SESSION

S. _____

To amend the Internal Revenue Code of 1986 to modify rules for grantor trusts.

IN THE SENATE OF THE UNITED STATES

Mr. WYDEN (for himself and Mr. KING) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Internal Revenue Code of 1986 to modify rules for grantor trusts.

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 “Getting Rid of Abusive
5 Trust Schemes Act” or the “GRATS Act”.

6 **SEC. 2. REQUIRED MINIMUM 15-YEAR TERM, ETC., FOR**
7 **GRANTOR RETAINED ANNUITY TRUSTS.**

8 (a) IN GENERAL.—Subsection (b) of section 2702 of
9 the Internal Revenue Code of 1986 is amended—

1 (1) by redesignating paragraphs (1), (2), and
2 (3) as subparagraphs (A), (B), and (C), respectively,
3 and by moving such subparagraphs (as so redesign-
4 ated) 2 ems to the right,

5 (2) by striking “For purposes of” and inserting
6 the following:

7 “(1) IN GENERAL.—For purposes of”,

8 (3) by striking “paragraph (1) or (2)” in para-
9 graph (1)(C) (as so redesignated) and inserting
10 “subparagraph (A) or (B)”, and

11 (4) by adding at the end the following new
12 paragraph:

13 “(2) ADDITIONAL REQUIREMENTS WITH RE-
14 SPECT TO GRANTOR RETAINED ANNUITY TRUSTS.—
15 For purposes of subsection (a), in the case of an in-
16 terest described in paragraph (1)(A) (determined
17 without regard to this paragraph) which is retained
18 by the transferor, such interest shall be treated as
19 described in such paragraph only if—

20 “(A) the right to receive the fixed amounts
21 referred to in such paragraph is for a term of
22 not less than 15 years and not more than the
23 life expectancy of the annuitant plus 10 years,

1 “(B) such fixed amounts, when determined
2 on an annual basis, do not decrease during the
3 term described in subparagraph (A), and

4 “(C) the remainder interest has a value, as
5 determined as of the time of the transfer, which
6 is—

7 “(i) not less than an amount equal to
8 the greater of—

9 “(I) 25 percent of the fair mar-
10 ket value of the property transferred
11 to the trust, or

12 “(II) \$500,000, and

13 “(ii) not greater than the fair market
14 value of the property transferred to the
15 trust.”.

16 (b) EFFECTIVE DATES.—The amendments made by
17 this section shall apply—

18 (1) to trusts created on or after the date of en-
19 actment of this Act, and

20 (2) to any portion of a trust established before
21 the date of the enactment of this Act which is attrib-
22 utable to a contribution made on or after such date.

1 **SEC. 3. CERTAIN TRANSFERS BETWEEN GRANTOR TRUST**
2 **AND DEEMED OWNER.**

3 (a) IN GENERAL.—Part IV of subchapter O of chap-
4 ter 1 of the Internal Revenue Code of 1986 is amended
5 by redesignating section 1063 as section 1064 and insert-
6 ing after section 1062 the following new section:

7 **“SEC. 1063. CERTAIN TRANSFERS BETWEEN GRANTOR**
8 **TRUST AND DEEMED OWNER.**

9 “(a) IN GENERAL.—In the case of any transfer of
10 property for consideration between a trust and a person
11 who is a deemed owner of the trust, such transfer shall
12 be treated as a sale or exchange for purposes of this chap-
13 ter regardless of the fact that such person is a deemed
14 owner of such trust.

15 “(b) EXCEPTION.—Subsection (a) shall not apply
16 to—

17 “(1) any grantor trust which is fully revocable
18 by the deemed owner,

19 “(2) any asset-backed securities trust, or

20 “(3) any grantor trust which is identified by the
21 Secretary (pursuant to regulations or other guid-
22 ance) as appropriate to exclude from the application
23 of subsection (a).

24 “(c) DEFINITIONS.—For purposes of this section—

25 “(1) ASSET-BACKED SECURITIES TRUST.—

1 “(A) IN GENERAL.—The term ‘asset-
2 backed securities trust’ means any grantor
3 trust—

4 “(i) for which the assets of the trust
5 are mortgage-backed securities or other
6 asset-backed securities, and

7 “(ii) which is engaged in
8 securitization transactions.

9 “(B) EXCEPTION.—The term ‘asset-backed
10 securities trust’ shall not include any grantor
11 trust identified by the Secretary (pursuant to
12 regulations or other guidance) as appropriate to
13 exclude from the application of subsection
14 (b)(2).

15 “(2) DEEMED OWNER.—The term ‘deemed
16 owner’ means, with respect to any trust, any person
17 who is treated as the owner of such trust (or a por-
18 tion thereof) under subpart E of part 1 of sub-
19 chapter J.

20 “(d) RULE OF CONSTRUCTION.—For purposes of
21 subsection (a), a transfer of property for consideration
22 shall include—

23 “(1) any satisfaction of an annuity, or

24 “(2) any discharge of debt,

25 by the trust in kind.”.

1 (b) RELATED TAXPAYERS.—Section 267(b) of the
2 Internal Revenue Code of 1986 is amended—

3 (1) by striking “or” at the end of paragraph
4 (12),

5 (2) by striking the period at the end of para-
6 graph (13) and inserting “; or”, and

7 (3) by adding at the end the following new
8 paragraph:

9 “(14) A grantor trust and the person treated as
10 the owner of the trust (or portion thereof) under
11 subpart E of part 1 of subchapter J of this chap-
12 ter.”.

13 (c) CLERICAL AMENDMENTS.—The table of sections
14 for part IV of subchapter O of chapter 1 of the Internal
15 Revenue Code of 1986 is amended by striking the item
16 relating to section 1063 and inserting the following new
17 items:

“Sec. 1063. Certain sales to grantor trusts.

“Sec. 1064. Cross references.”.

18 (d) EFFECTIVE DATES.—The amendments made by
19 this section shall apply to transfers made after the date
20 of the enactment of this Act.

21 **SEC. 4. PAYMENT OF TAX ON INCOME OF GRANTOR TRUST.**

22 (a) IN GENERAL.—Section 2503 of the Internal Rev-
23 enue Code of 1986 is amended—

1 (1) in subsection (a), by striking “The term”
2 and inserting “Subject to subsection (d), the term”
3 and

4 (2) by inserting after subsection (c) the fol-
5 lowing:

6 “(d) PAYMENT OF TAX ON INCOME OF GRANTOR
7 TRUST.—

8 “(1) IN GENERAL.—Notwithstanding sub-
9 sections (b) and (e), an amount equal to the taxes
10 paid on the income of an applicable grantor trust for
11 any calendar year by a person who is the deemed
12 owner of such trust (or portion thereof) shall be
13 treated for purposes of this subtitle as a taxable gift
14 made during such calendar year.

15 “(2) APPLICABLE GRANTOR TRUST.—For pur-
16 poses of this subsection, the term ‘applicable grantor
17 trust’ means any trust—

18 “(A) with respect to which the taxpayer is
19 considered an owner under subpart E of part I
20 of subchapter J of chapter 1, and

21 “(B) which is not fully revocable by the
22 taxpayer.

23 “(3) REIMBURSEMENT BY TRUST.—Paragraph
24 (1) shall not apply with respect to any amount paid
25 by the deemed owner for any calendar year which is

1 reimbursed by the applicable grantor trust during
2 such calendar year.

3 “(4) DATE OF GIFT.—In the case of any
4 amount treated for purposes of this subtitle as a
5 taxable gift pursuant to paragraph (1), such gift
6 shall be deemed to have occurred on the earlier of—

7 “(A) December 31 of the calendar year for
8 which the tax is paid by the person who is the
9 deemed owner,

10 “(B) the day before the date of the death
11 of such person, or

12 “(C) the date on which such person re-
13 nounces any right of reimbursement by the ap-
14 plicable grantor trust with respect to the cal-
15 endar year for which the tax is paid by such
16 person.

17 “(5) DEEMED OWNER.—For purposes of this
18 subsection, the term ‘deemed owner’ has the same
19 meaning given such term under section 1063(c).”.

20 (b) CONFORMING AMENDMENTS.—

21 (1) Section 2522 of the Internal Revenue Code
22 of 1986 is amended—

23 (A) by redesignating subsection (f) as sub-
24 section (g), and

1 (B) by inserting after subsection (e) the
2 following new subsection:

3 “(f) DENIAL OF DEDUCTION FOR PAYMENT OF TAX
4 ON INCOME OF GRANTOR TRUST.—No deduction shall be
5 allowed under this section for any amount which is treated
6 as a gift by reason of section 2503(d).”.

7 (2) Section 2523 of such Code is amended by
8 adding at the end the following new subsection:

9 “(j) DENIAL OF DEDUCTION FOR PAYMENT OF TAX
10 ON INCOME OF GRANTOR TRUST.—No deduction shall be
11 allowed under this section for any amount which is treated
12 as a gift by reason of section 2503(d).”.

13 (c) EFFECTIVE DATES.—The amendments made by
14 this section shall apply to trusts created on or after the
15 date of enactment of this Act.