

112TH CONGRESS  
1ST SESSION

# H. R. 1040

To amend the Internal Revenue Code of 1986 to provide taxpayers a flat tax alternative to the current income tax system.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 2011

Mr. BURGESS (for himself, Mr. BARTLETT, Mr. COLE, and Mr. ROSS of Florida) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Internal Revenue Code of 1986 to provide taxpayers a flat tax alternative to the current income tax system.

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 “Freedom Flat Tax  
5 Act”.

1 **SEC. 2. FREEDOM FLAT TAX.**

2 (a) IN GENERAL.—Subchapter A of chapter 1 of the  
3 Internal Revenue Code of 1986 is amended by inserting  
4 after part VII the following new part:

5 **“PART VIII—FREEDOM FLAT TAX**

“Sec. 60. Irrevocable election to be subject to flat tax.

“Sec. 60A. Tax imposed on individuals.

“Sec. 60B. Tax imposed on business activities.

“Sec. 60C. Tax on noncash compensation provided to employees not engaged in  
business activity.

6 **“SEC. 60. IRREVOCABLE ELECTION TO BE SUBJECT TO**  
7 **FLAT TAX.**

8 “(a) INDIVIDUAL.—

9 “(1) IN GENERAL.—Except as provided in para-  
10 graph (2), in lieu of the tax imposed by sections 1  
11 (relating to tax imposed) and 55 (relating to alter-  
12 native minimum tax imposed), under regulations  
13 prescribed by the Secretary, an individual may make  
14 an irrevocable election to be subject to the tax im-  
15 posed by this part.

16 “(2) INNOCENT SPOUSE EXCEPTION.—An indi-  
17 vidual who has made an election under paragraph  
18 (1) and who subsequently obtains relief of liability  
19 for tax under section 6015(b) may, not later than 1  
20 year after the date such relief is granted, revoke the  
21 election made under paragraph (1).

22 “(b) PERSON ENGAGED IN BUSINESS ACTIVITY.—In  
23 lieu of the tax imposed by sections 11 (relating to tax im-

1 posed) and 55 (relating to alternative minimum tax im-  
2 posed), under regulations prescribed by the Secretary, a  
3 person engaged in business activity may make an irrev-  
4 ocable election to be subject to the tax imposed by this  
5 part.

6 “(c) DISALLOWANCE OF CREDITS.—No credit shall  
7 be allowed under this chapter for any taxable year to any  
8 person with respect to whom an election under subsection  
9 (a) or (b) is in effect.

10 **“SEC. 60A. TAX IMPOSED ON INDIVIDUALS.**

11 “(a) IN GENERAL.—There is hereby imposed on the  
12 taxable income of every individual who makes an election  
13 to be subject to this part a tax equal to—

14 “(1) 19 percent of the taxable income of such  
15 individual for such taxable year in the case of the  
16 first 2 taxable years of the individual beginning with  
17 the taxable year for which the election is made, and

18 “(2) 17 percent of the taxable income of such  
19 individual for such taxable year in the case of all  
20 taxable years subsequent to the taxable years de-  
21 scribed in paragraph (1).

22 “(b) TAXABLE INCOME.—For purposes of this part,  
23 the term ‘taxable income’ means the excess of—

24 “(1) the sum of—

1           “(A) wages (as defined in section 3121(a)  
2           without regard to paragraph (1) thereof) which  
3           are paid in cash and which are received during  
4           the taxable year for services performed in the  
5           United States,

6           “(B) retirement distributions which are in-  
7           cludible in gross income for such taxable year,  
8           plus

9           “(C) amounts received under any law of  
10          the United States or of any State which is in  
11          the nature of unemployment compensation, over  
12          “(2) the standard deduction.

13          “(c) STANDARD DEDUCTION.—For purposes of this  
14          part—

15                 “(1) IN GENERAL.—The term ‘standard deduc-  
16                 tion’ means the sum of—

17                         “(A) the basic standard deduction, plus

18                         “(B) the additional standard deduction.

19                 “(2) BASIC STANDARD DEDUCTION.—For pur-  
20                 poses of paragraph (1), the basic standard deduction  
21                 is—

22                         “(A) \$30,320 in the case of—

23                                 “(i) a joint return, or

24                                 “(ii) a surviving spouse (as defined in  
25                                 section 2(a)),

1           “(B) \$19,350 in the case of a head of  
2 household (as defined in section 2(b)), and

3           “(C) \$15,160 in the case of an indi-  
4 vidual—

5                   “(i) who is not married and who is  
6 not a surviving spouse or head of house-  
7 hold, or

8                   “(ii) who is a married individual filing  
9 a separate return.

10           “(3) ADDITIONAL STANDARD DEDUCTION.—For  
11 purposes of paragraph (1), the additional standard  
12 deduction is \$6,530 for each dependent (as defined  
13 in section 152) who is a qualifying child (as defined  
14 in section 152(c)(1)) for the taxable year and who  
15 is not required to file a return for such taxable year.

16           “(d) RETIREMENT DISTRIBUTIONS.—For purposes  
17 of this section, the term ‘retirement distribution’ means  
18 any distribution from—

19                   “(1) a plan described in section 401(a) which  
20 includes a trust exempt from tax under section  
21 501(a),

22                   “(2) an annuity plan described in section  
23 403(a),

24                   “(3) an annuity contract described in section  
25 403(b),

1           “(4) an individual retirement account described  
2           in section 408(a),

3           “(5) an individual retirement annuity described  
4           in section 408(b),

5           “(6) an eligible deferred compensation plan (as  
6           defined in section 457),

7           “(7) a governmental plan (as defined in section  
8           414(d)), or

9           “(8) a trust described in section 501(c)(18).

10 Such term includes any plan, contract, account, annuity,  
11 or trust which, at any time, has been determined by the  
12 Secretary to be such a plan, contract, account, annuity,  
13 or trust.

14           “(e) INCOME OF CERTAIN CHILDREN.—For purposes  
15 of this part—

16           “(1) an individual’s taxable income shall include  
17           the taxable income of each dependent child of such  
18           individual who has not attained age 14 as of the  
19           close of such taxable year, and

20           “(2) such dependent child shall have no liability  
21           for tax imposed by this section with respect to such  
22           income and shall not be required to file a return for  
23           such taxable year.

24           “(f) INFLATION ADJUSTMENT.—

1           “(1) IN GENERAL.—In the case of any taxable  
2 year beginning in a calendar year after 2011, each  
3 dollar amount contained in subsection (c) shall be  
4 increased by an amount determined by the Secretary  
5 to be equal to—

6                   “(A) such dollar amount, multiplied by

7                   “(B) the cost-of-living adjustment for such  
8 calendar year.

9           “(2) COST-OF-LIVING ADJUSTMENT.—For pur-  
10 poses of paragraph (1), the cost-of-living adjustment  
11 for any calendar year is the percentage (if any) by  
12 which—

13                   “(A) the CPI for the preceding calendar  
14 year, exceeds

15                   “(B) the CPI for the calendar year 2010.

16           “(3) CPI FOR ANY CALENDAR YEAR.—For pur-  
17 poses of paragraph (2), the CPI for any calendar  
18 year is the average of the Consumer Price Index as  
19 of the close of the 12-month period ending on Au-  
20 gust 31 of such calendar year.

21           “(4) CONSUMER PRICE INDEX.—For purposes  
22 of paragraph (3), the term ‘Consumer Price Index’  
23 means the last Consumer Price Index for all-urban  
24 consumers published by the Department of Labor.  
25 For purposes of the preceding sentence, the revision

1 of the Consumer Price Index which is most con-  
2 sistent with the Consumer Price Index for calendar  
3 year 1986 shall be used.

4 “(5) ROUNDING.—If any increase determined  
5 under paragraph (1) is not a multiple of \$10, such  
6 increase shall be rounded to the next highest mul-  
7 tiple of \$10.

8 “(g) MARITAL STATUS.—For purposes of this sec-  
9 tion, marital status shall be determined under section  
10 7703.

11 **“SEC. 60B. TAX IMPOSED ON BUSINESS ACTIVITIES.**

12 “(a) TAX IMPOSED.—There is hereby imposed on  
13 every person engaged in a business activity who makes an  
14 election to be taxed under this part a tax equal to—

15 “(1) 19 percent of the business taxable income  
16 of such person for such taxable year in the case of  
17 the first 2 taxable years of the person beginning  
18 with the taxable year for which the election is made,  
19 and

20 “(2) 17 percent of the business taxable income  
21 of such person for such taxable year in the case of  
22 all taxable years subsequent to the taxable years de-  
23 scribed in paragraph (1).

24 “(b) LIABILITY FOR TAX.—The tax imposed by this  
25 section shall be paid by the person engaged in the business



1 activity, whether such person is an individual, partnership,  
2 corporation, or otherwise.

3 “(c) BUSINESS TAXABLE INCOME.—For purposes of  
4 this section—

5 “(1) IN GENERAL.—The term ‘business taxable  
6 income’ means gross active income reduced by the  
7 deductions specified in subsection (d).

8 “(2) GROSS ACTIVE INCOME.—

9 “(A) IN GENERAL.—For purposes of para-  
10 graph (1), the term ‘gross active income’ means  
11 gross receipts from—

12 “(i) the sale or exchange of property  
13 or services in the United States by any  
14 person in connection with a business activ-  
15 ity, and

16 “(ii) the export of property or services  
17 from the United States in connection with  
18 a business activity.

19 “(B) EXCHANGES.—For purposes of this  
20 section, the amount treated as gross receipts  
21 from the exchange of property or services is the  
22 fair market value of the property or services re-  
23 ceived, plus any money received.

1           “(C) COORDINATION WITH SPECIAL RULES  
2           FOR FINANCIAL SERVICES, ETC.—Except as  
3           provided in subsection (e)—

4                   “(i) the term ‘property’ does not in-  
5                   clude money or any financial instrument,  
6                   and

7                   “(ii) the term ‘services’ does not in-  
8                   clude financial services.

9           “(3) EXEMPTION FROM TAX FOR ACTIVITIES OF  
10           GOVERNMENTAL ENTITIES AND TAX-EXEMPT ORGA-  
11           NIZATIONS.—For purposes of this section, the term  
12           ‘business activity’ does not include any activity of a  
13           governmental entity or of any other organization  
14           which is exempt from tax under this chapter.

15           “(d) DEDUCTIONS.—

16                   “(1) IN GENERAL.—The deductions specified in  
17                   this subsection are—

18                           “(A) the cost of business inputs for the  
19                           business activity,

20                           “(B) wages (as defined in section 3121(a)  
21                           without regard to paragraph (1) thereof) which  
22                           are paid in cash for services performed in the  
23                           United States as an employee, and

24                           “(C) retirement contributions to or under  
25                           any plan or arrangement which makes retire-

1           ment distributions (as defined in section  
2           60A(d)) for the benefit of such employees to the  
3           extent such contributions are allowed as a de-  
4           duction under section 404.

5           “(2) BUSINESS INPUTS.—

6                   “(A) IN GENERAL.—For purposes of para-  
7           graph (1), the term ‘cost of business inputs’  
8           means—

9                           “(i) the amount paid for property sold  
10                           or used in connection with a business ac-  
11                           tivity,

12                           “(ii) the amount paid for services  
13                           (other than for the services of employees,  
14                           including fringe benefits paid by reason of  
15                           such services) in connection with a busi-  
16                           ness activity, and

17                           “(iii) any excise tax, sales tax, cus-  
18                           toms duty, or other separately stated levy  
19                           imposed by a Federal, State, or local gov-  
20                           ernment on the purchase of property or  
21                           services which are for use in connection  
22                           with a business activity.

23           Such term shall not include any tax imposed by  
24           chapter 2 or 21.

1           “(B) EXCEPTIONS.—Such term shall not  
2           include—

3                   “(i) items described in subparagraphs  
4                   (B) and (C) of paragraph (1), and

5                   “(ii) items for personal use not in  
6                   connection with any business activity.

7           “(C) EXCHANGES.—For purposes of this  
8           section, the amount treated as paid in connec-  
9           tion with the exchange of property or services  
10          is the fair market value of the property or serv-  
11          ices exchanged, plus any money paid.

12          “(e) SPECIAL RULES FOR FINANCIAL INTERMEDI-  
13          ATION SERVICE ACTIVITIES.—In the case of the business  
14          activity of providing financial intermediation services, the  
15          taxable income from such activity shall be equal to the  
16          value of the intermediation services provided in such activ-  
17          ity.

18          “(f) EXCEPTION FOR SERVICES PERFORMED AS EM-  
19          PLOYEE.—For purposes of this section, the term ‘business  
20          activity’ does not include the performance of services by  
21          an employee for the employee’s employer.

22          “(g) CARRYOVER OF CREDIT-EQUIVALENT OF EX-  
23          CESS DEDUCTIONS.—

24                   “(1) IN GENERAL.—If the aggregate deductions  
25                   for any taxable year exceed the gross active income

1 for such taxable year, the credit-equivalent of such  
2 excess shall be allowed as a credit against the tax  
3 imposed by this section for the following taxable  
4 year.

5 “(2) CREDIT-EQUIVALENT OF EXCESS DEDUC-  
6 TIONS.—For purposes of paragraph (1), the credit-  
7 equivalent of the excess described in paragraph (1)  
8 for any taxable year is an amount equal to—

9 “(A) the sum of—

10 “(i) such excess, plus

11 “(ii) the product of such excess and  
12 the 3-month Treasury rate for the last  
13 month of such taxable year, multiplied by

14 “(B) the rate of the tax imposed by sub-  
15 section (a) for such taxable year.

16 “(3) CARRYOVER OF UNUSED CREDIT.—If the  
17 credit allowable for any taxable year by reason of  
18 this subsection exceeds the tax imposed by this sec-  
19 tion for such year, then (in lieu of treating such ex-  
20 cess as an overpayment) the sum of—

21 “(A) such excess, plus

22 “(B) the product of such excess and the 3-  
23 month Treasury rate for the last month of such  
24 taxable year,

1 shall be allowed as a credit against the tax imposed  
2 by this section for the following taxable year.

3 “(4) 3-MONTH TREASURY RATE.—For purposes  
4 of this subsection, the 3-month Treasury rate is the  
5 rate determined by the Secretary based on the aver-  
6 age market yield (during any 1-month period se-  
7 lected by the Secretary and ending in the calendar  
8 month in which the determination is made) on out-  
9 standing marketable obligations of the United States  
10 with remaining periods to maturity of 3 months or  
11 less.

12 **“SEC. 60C. TAX ON NONCASH COMPENSATION PROVIDED**  
13 **TO EMPLOYEES NOT ENGAGED IN BUSINESS**  
14 **ACTIVITY.**

15 “(a) IMPOSITION OF TAX.—There is hereby imposed  
16 on every employer of an employee to whom this section  
17 applies and who makes an election to be taxed under this  
18 part a tax equal to—

19 “(1) 19 percent of the value of excludable com-  
20 pensation provided during the calendar year by the  
21 employer for the benefit of employees to whom this  
22 section applies in the case of the first 2 calendar  
23 years beginning with the calendar year for which the  
24 election under section 60 is made, and

1           “(2) 17 percent of such excludable compensa-  
2           tion during the calendar year in the case of all cal-  
3           endar years subsequent to the calendar years de-  
4           scribed in paragraph (1).

5           “(b) LIABILITY FOR TAX.—The tax imposed by this  
6           section shall be paid by the employer.

7           “(c) EXCLUDABLE COMPENSATION.—For purposes  
8           of subsection (a), the term ‘excludable compensation’  
9           means any remuneration for services performed as an em-  
10          ployee other than—

11           “(1) wages (as defined in section 3121(a) with-  
12          out regard to paragraph (1) thereof) which are paid  
13          in cash,

14           “(2) remuneration for services performed out-  
15          side the United States, and

16           “(3) retirement contributions to or under any  
17          plan or arrangement which makes retirement dis-  
18          tributions (as defined in section 60A(d)).

19          “(d) EMPLOYEES TO WHOM SECTION APPLIES.—  
20          This section shall apply to an employee who is employed  
21          in any activity by—

22           “(1) any organization which is exempt from  
23          taxation under this chapter, or

1           “(2) any agency or instrumentality of the  
2           United States, any State or political subdivision of  
3           a State, or the District of Columbia.”.

4           (b) CLERICAL AMENDMENT.—The table of parts for  
5           subchapter A of chapter 1 of such Code is amended by  
6           adding at the end the following new item:

                                  “PART VIII. FREEDOM FLAT TAX.”.

7           (c) EFFECTIVE DATE.—The amendments made by  
8           this title shall apply to taxable years beginning after De-  
9           cember 31, 2011.

10   **SEC. 3. REPEAL OF ESTATE AND GIFT TAXES.**

11           (a) IN GENERAL.—Subtitle B of the Internal Rev-  
12           enue Code of 1986 is hereby repealed.

13           (b) EFFECTIVE DATE.—The repeal made by sub-  
14           section (a) shall apply to the estates of decedents dying,  
15           and gifts and generation-skipping transfers made, after  
16           December 31, 2011.

17           (c) CROSS REFERENCE.—See section 102 of the In-  
18           ternal Revenue Code of 1986 for exclusion of gifts and  
19           inheritances from gross income.

20   **SEC. 4. SUPERMAJORITY REQUIRED TO CONSIDER REV-**  
21                                   **ENUE MEASURE.**

22           A bill, joint resolution, amendment to a bill or joint  
23           resolution, or conference report that—



1           (1) includes an increase in the rates of tax  
2           specified in section 60A(a) or 60B(a) of the Internal  
3           Revenue Code of 1986 (as amended by this Act), or  
4           (2) reduces the standard deduction, as defined  
5           in section 60A(c) of such Code (as so amended), or  
6           the deductions specified in section 60B(d) of such  
7           Code (as so amended),  
8           may not be considered as passed or agreed to by the  
9           House of Representatives or the Senate unless so deter-  
10          mined by a vote of not less than two-thirds of the Members  
11          of the House of Representatives or the Senate (as the case  
12          may be) voting, a quorum being present.

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