

109TH CONGRESS
1ST SESSION

S. 928

To amend the Internal Revenue Code of 1986 to provide for the immediate and permanent repeal of the estate tax on family-owned businesses and farms, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 27, 2005

Mrs. LINCOLN introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide for the immediate and permanent repeal of the estate tax on family-owned businesses and farms, 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. SHORT TITLE.**

4 This Act may be cited as the “Estate Tax Repeal Ac-
5 celeration (ExTRA) for Family-Owned Businesses and
6 Farms Act”.

1 **SEC. 2. REPEAL OF ESTATE TAX ON FAMILY-OWNED BUSI-**
 2 **NESSES AND FARMS.**

3 (a) CARRYOVER BUSINESS INTEREST EXCLUSION.—
 4 Part IV of subchapter A of chapter 11 of the Internal
 5 Revenue Code of 1986 (relating to taxable estate) is
 6 amended by inserting after section 2058 the following new
 7 section:

8 **“SEC. 2059. CARRYOVER BUSINESS INTERESTS.**

9 “(a) GENERAL RULES.—

10 “(1) ALLOWANCE OF DEDUCTION.—For pur-
 11 poses of the tax imposed by section 2001, in the
 12 case of an estate of a decedent to which this section
 13 applies, the value of the taxable estate shall be de-
 14 termined by deducting from the value of the gross
 15 estate the adjusted value of the carryover business
 16 interests of the decedent which are described in sub-
 17 section (b)(2).

18 “(2) APPLICATION OF CARRYOVER BASIS
 19 RULES.—With respect to the adjusted value of the
 20 carryover business interests of the decedent which
 21 are described in subsection (b)(2), the rules of sec-
 22 tion 1023 shall apply.

23 “(b) ESTATES TO WHICH SECTION APPLIES.—

24 “(1) IN GENERAL.—This section shall apply to
 25 an estate if—

1 “(A) the decedent was (at the date of the
2 decedent’s death) a citizen or resident of the
3 United States,

4 “(B) the executor elects the application of
5 this section under rules similar to the rules of
6 paragraphs (1) and (3) of section 2032A(d) and
7 files the agreement referred to in subsection (e),
8 and

9 “(C) during the 8-year period ending on
10 the date of the decedent’s death there have
11 been periods aggregating 5 years or more dur-
12 ing which—

13 “(i) the carryover business interests
14 described in paragraph (2) were owned by
15 the decedent or a member of the dece-
16 dent’s family, and

17 “(ii) there was material participation
18 (within the meaning of section
19 2032A(e)(6)) by the decedent, a member
20 of the decedent’s family, or a qualified heir
21 in the operation of the business to which
22 such interests relate.

23 “(2) INCLUDIBLE CARRYOVER BUSINESS INTER-
24 ESTS.—The carryover business interests described in
25 this paragraph are the interests which—

1 “(A) are included in determining the value
2 of the gross estate,

3 “(B) are acquired by any qualified heir
4 from, or passed to any qualified heir from, the
5 decedent (within the meaning of section
6 2032A(e)(9)), and

7 “(C) are subject to the election under
8 paragraph (1)(B).

9 “(3) RULES REGARDING MATERIAL PARTICIPA-
10 TION.—For purposes of paragraph (1)(C)(ii)—

11 “(A) in the case a surviving spouse, mate-
12 rial participation by such spouse may be satis-
13 fied under rules similar to the rules under sec-
14 tion 2032A(b)(5),

15 “(B) in the case of a carryover business in-
16 terest in an entity carrying on multiple trades
17 or businesses, material participation in each
18 trade or business is satisfied by material par-
19 ticipation in the entity or in 1 or more of the
20 multiple trades or businesses, and

21 “(C) in the case of a lending and finance
22 business (as defined in section
23 6166(b)(10)(B)(ii)), material participation is
24 satisfied under the rules under subclause (I) or
25 (II) of section 6166(b)(10)(B)(i).

1 “(c) ADJUSTED VALUE OF THE CARRYOVER BUSI-
2 NESS INTERESTS.—For purposes of this section—

3 “(1) IN GENERAL.—The adjusted value of any
4 carryover business interest is the value of such inter-
5 est for purposes of this chapter (determined without
6 regard to this section), as adjusted under paragraph
7 (2).

8 “(2) ADJUSTMENT FOR PREVIOUS TRANS-
9 FERS.—The Secretary may increase the value of any
10 carryover business interest by that portion of those
11 assets transferred from such carryover business in-
12 terest to the decedent’s taxable estate within 3 years
13 before the date of the decedent’s death.

14 “(d) CARRYOVER BUSINESS INTEREST.—

15 “(1) IN GENERAL.—For purposes of this sec-
16 tion, the term ‘carryover business interest’ means—

17 “(A) an interest as a proprietor in a trade
18 or business carried on as a proprietorship, or

19 “(B) an interest in an entity carrying on
20 a trade or business, if—

21 “(i) at least—

22 “(I) 50 percent of such entity is
23 owned (directly or indirectly) by the
24 decedent and members of the dece-
25 dent’s family,

1 “(II) 70 percent of such entity is
2 so owned by members of 2 families, or

3 “(III) 90 percent of such entity
4 is so owned by members of 3 families,
5 and

6 “(ii) for purposes of subclause (II) or
7 (III) of clause (i), at least 30 percent of
8 such entity is so owned by the decedent
9 and members of the decedent’s family.

10 For purposes of the preceding sentence, a decedent
11 shall be treated as engaged in a trade or business
12 if any member of the decedent’s family is engaged
13 in such trade or business.

14 “(2) LENDING AND FINANCE BUSINESS.—For
15 purposes of this section, any asset used in a lending
16 and finance business (as defined in section
17 6166(b)(10)(B)(ii)) shall be treated as an asset
18 which is used in carrying on a trade or business.

19 “(3) LIMITATION.—Such term shall not in-
20 clude—

21 “(A) any interest in a trade or business
22 the principal place of business of which is not
23 located in the United States,

24 “(B) any interest in an entity, if the stock
25 or debt of such entity or a controlled group (as

1 defined in section 267(f)(1)) of which such enti-
 2 ty was a member was readily tradable on an es-
 3 tablished securities market or secondary market
 4 (as defined by the Secretary) at any time,

5 “(C) that portion of an interest in an enti-
 6 ty transferred by gift to such interest within 3
 7 years before the date of the decedent’s death,
 8 and

9 “(D) that portion of an interest in an enti-
 10 ty which is attributable to cash or marketable
 11 securities, or both, in any amount in excess of
 12 the reasonably anticipated business needs of
 13 such entity.

14 In any proceeding before the United States Tax
 15 Court involving a notice of deficiency based in whole
 16 or in part on the allegation that cash or marketable
 17 securities, or both, are accumulated in an amount in
 18 excess of the reasonably anticipated business needs
 19 of such entity, the burden of proof with respect to
 20 such allegation shall be on the Secretary to the ex-
 21 tent such cash or marketable securities are less than
 22 35 percent of the value of the interest in such entity.

23 “(4) RULES REGARDING OWNERSHIP.—

24 “(A) OWNERSHIP OF ENTITIES.—For pur-
 25 poses of paragraph (1)(B)—

1 “(i) CORPORATIONS.—Ownership of a
 2 corporation shall be determined by the
 3 holding of stock possessing the appropriate
 4 percentage of the total combined voting
 5 power of all classes of stock entitled to vote
 6 and the appropriate percentage of the total
 7 value of shares of all classes of stock.

8 “(ii) PARTNERSHIPS.—Ownership of a
 9 partnership shall be determined by the
 10 owning of the appropriate percentage of
 11 the capital interest in such partnership.

12 “(B) OWNERSHIP OF TIERED ENTITIES.—
 13 For purposes of this section, if by reason of
 14 holding an interest in a trade or business, a de-
 15 cedent, any member of the decedent’s family,
 16 any qualified heir, or any member of any quali-
 17 fied heir’s family is treated as holding an inter-
 18 est in any other trade or business—

19 “(i) such ownership interest in the
 20 other trade or business shall be dis-
 21 regarded in determining if the ownership
 22 interest in the first trade or business is a
 23 carryover business interest, and

24 “(ii) this section shall be applied sepa-
 25 rately in determining if such interest in

1 any other trade or business is a carryover
2 business interest.

3 “(C) INDIVIDUAL OWNERSHIP RULES.—

4 For purposes of this section, an interest owned,
5 directly or indirectly, by or for an entity de-
6 scribed in paragraph (1)(B) shall be considered
7 as being owned proportionately by or for the en-
8 tity’s shareholders, partners, or beneficiaries. A
9 person shall be treated as a beneficiary of any
10 trust only if such person has a present interest
11 in such trust.

12 “(e) AGREEMENT.—The agreement referred to in
13 this subsection is a written agreement signed by each per-
14 son in being who has an interest (whether or not in posses-
15 sion) in any property designated in such agreement con-
16 senting to the application of this section with respect to
17 such property.

18 “(f) OTHER DEFINITIONS AND APPLICABLE
19 RULES.—For purposes of this section—

20 “(1) QUALIFIED HEIR.—The term ‘qualified
21 heir’ means a United States citizen who is—

22 “(A) described in section 2032A(e)(1), or

23 “(B) an active employee of the trade or
24 business to which the carryover business inter-
25 est relates if such employee has been employed

1 by such trade or business for a period of at
 2 least 10 years before the date of the decedent's
 3 death.

4 “(2) MEMBER OF THE FAMILY.—The term
 5 ‘member of the family’ has the meaning given to
 6 such term by section 2032A(e)(2).

7 “(3) APPLICABLE RULES.—Rules similar to the
 8 following rules shall apply:

9 “(A) Section 2032A(b)(4) (relating to de-
 10 cedents who are retired or disabled).

11 “(B) Section 2032A(e)(10) (relating to
 12 community property).

13 “(C) Section 2032A(e)(14) (relating to
 14 treatment of replacement property acquired in
 15 section 1031 or 1033 transactions).

16 “(D) Section 2032A(g) (relating to appli-
 17 cation to interests in partnerships, corporations,
 18 and trusts).

19 “(4) SAFE HARBOR FOR ACTIVE ENTITIES
 20 HELD BY ENTITY CARRYING ON A TRADE OR BUSI-
 21 NESS.—For purposes of this section, if—

22 “(A) an entity carrying on a trade or busi-
 23 ness owns 20 percent or more in value of the
 24 voting interests of another entity, or such other
 25 entity has 15 or fewer owners, and

1 “(B) 80 percent or more of the value of
 2 the assets of each such entity is attributable to
 3 assets used in an active business operation,
 4 then the requirements under subsections
 5 (b)(1)(C)(ii) and (d)(3)(D) shall be met with
 6 respect to an interest in such an entity.”.

7 (b) CARRYOVER BASIS RULES FOR CARRYOVER
 8 BUSINESS INTERESTS.—Part II of subchapter O of chap-
 9 ter 1 of the Internal Revenue Code of 1986 (relating to
 10 basis rules of general application) is amended by inserting
 11 after section 1022 the following new section:

12 **“SEC. 1023. TREATMENT OF CARRYOVER BUSINESS INTER-**
 13 **ESTS.**

14 “(a) IN GENERAL.—Except as otherwise provided in
 15 this section—

16 “(1) qualified property acquired from a dece-
 17 dent shall be treated for purposes of this subtitle as
 18 transferred by gift, and

19 “(2) the basis of the person acquiring qualified
 20 property from such a decedent shall be the lesser
 21 of—

22 “(A) the adjusted basis of the decedent, or

23 “(B) the fair market value of the property
 24 at the date of the decedent’s death.

1 “(b) QUALIFIED PROPERTY.—For purposes of this
 2 section, the term ‘qualified property’ means the carryover
 3 business interests of the decedent with respect to which
 4 an election is made under section 2059(b)(1)(B).

5 “(c) PROPERTY ACQUIRED FROM THE DECEDENT.—
 6 For purposes of this section, the following property shall
 7 be considered to have been acquired from the decedent:

8 “(1) Property acquired by bequest, devise, or
 9 inheritance, or by the decedent’s estate from the de-
 10 cedent.

11 “(2) Property transferred by the decedent dur-
 12 ing his lifetime—

13 “(A) to a qualified revocable trust (as de-
 14 fined in section 645(b)(1)), or

15 “(B) to any other trust with respect to
 16 which the decedent reserved the right to make
 17 any change in the enjoyment thereof through
 18 the exercise of a power to alter, amend, or ter-
 19 minate the trust.

20 “(3) Any other property passing from the dece-
 21 dent by reason of death to the extent that such
 22 property passed without consideration.

23 “(d) COORDINATION WITH SECTION 691.—This sec-
 24 tion shall not apply to property which constitutes a right

1 to receive an item of income in respect of a decedent under
2 section 691.

3 “(e) CERTAIN LIABILITIES DISREGARDED.—

4 “(1) IN GENERAL.—In determining whether
5 gain is recognized on the acquisition of property—

6 “(A) from a decedent by a decedent’s es-
7 tate or any beneficiary other than a tax-exempt
8 beneficiary, and

9 “(B) from the decedent’s estate by any
10 beneficiary other than a tax-exempt beneficiary,
11 and in determining the adjusted basis of such
12 property, liabilities in excess of basis shall be
13 disregarded.

14 “(2) TAX-EXEMPT BENEFICIARY.—For pur-
15 poses of paragraph (1), the term ‘tax-exempt bene-
16 ficiary’ means—

17 “(A) the United States, any State or polit-
18 ical subdivision thereof, any possession of the
19 United States, any Indian tribal government
20 (within the meaning of section 7871), or any
21 agency or instrumentality of any of the fore-
22 going,

23 “(B) an organization (other than a cooper-
24 ative described in section 521) which is exempt
25 from tax imposed by chapter 1,

1 “(C) any foreign person or entity (within
2 the meaning of section 168(h)(2)), and

3 “(D) to the extent provided in regulations,
4 any person to whom property is transferred for
5 the principal purpose of tax avoidance.

6 “(f) REGULATIONS.—The Secretary shall prescribe
7 such regulations as may be necessary to carry out the pur-
8 poses of this section.”.

9 (c) CLERICAL AMENDMENTS.—

10 (1) The table of sections for part IV of sub-
11 chapter A of chapter 11 of the Internal Revenue
12 Code of 1986 is amended by inserting after the item
13 relating to section 2058 the following new item:

“Sec. 2059. Carryover business exclusion.”.

14 (2) The table of sections for part II of sub-
15 chapter O of chapter 1 of such Code is amended by
16 inserting after the item relating to section 1022 the
17 following new item:

“Sec. 1023. Treatment of carryover business interests.”.

18 (d) EFFECTIVE DATES.—The amendments made by
19 this section shall apply to estates of decedents dying, and
20 gifts made—

21 (1) after the date of the enactment of this Act,
22 and before January 1, 2010, and

23 (2) after December 31, 2010.

