

105TH CONGRESS
1ST SESSION

H. R. 1583

To amend the Internal Revenue Code of 1986 to provide an exclusion from estate tax for family-owned businesses.

IN THE HOUSE OF REPRESENTATIVES

MAY 13, 1997

Ms. HOOLEY of Oregon (for herself and Mr. COOKSEY) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide an exclusion from estate tax for family-owned businesses.

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 “Family Business Pres-
5 ervation Act”.

6 **SEC. 2. FAMILY-OWNED BUSINESS EXCLUSION.**

7 (a) IN GENERAL.—Part III of subchapter A of chap-
8 ter 11 (relating to gross estate) is amended by inserting
9 after section 2033 the following new section:

1 **“SEC. 2033A. FAMILY-OWNED BUSINESS EXCLUSION.**

2 “(a) IN GENERAL.—In the case of an estate of a de-
3 cedent to which this section applies, the value of the gross
4 estate shall not include the lesser of—

5 “(1) the adjusted value of the qualified family-
6 owned business interests of the decedent otherwise
7 includible in the estate, or

8 “(2) \$1,200,000.

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

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

12 “(A) the decedent was (at the date of the
13 decedent’s death) a citizen or resident of the
14 United States,

15 “(B) the sum of—

16 “(i) the adjusted value of the qualified
17 family-owned business interests described
18 in paragraph (2), plus

19 “(ii) the amount of the gifts of such
20 interests determined under paragraph (3),
21 exceeds 50 percent of the adjusted gross estate,
22 and

23 “(C) during the 8-year period ending on
24 the date of the decedent’s death there have
25 been periods aggregating 5 years or more dur-
26 ing which—

1 “(i) such interests were owned by the
2 decedent or a member of the decedent’s
3 family, and

4 “(ii) there was material participation
5 (within the meaning of section
6 2032A(e)(6)) by the decedent or a member
7 of the decedent’s family in the operation of
8 the business to which such interests relate.

9 “(2) INCLUDIBLE QUALIFIED FAMILY-OWNED
10 BUSINESS INTERESTS.—The qualified family-owned
11 business interests described in this paragraph are
12 the interests which—

13 “(A) are included in determining the value
14 of the gross estate (without regard to this sec-
15 tion), and

16 “(B) are acquired by any qualified heir
17 from, or passed to any qualified heir from, the
18 decedent (within the meaning of section
19 2032A(e)(9)).

20 “(3) INCLUDIBLE GIFTS OF INTERESTS.—The
21 amount of the gifts of qualified family-owned busi-
22 ness interests determined under this paragraph is
23 the excess of—

24 “(A) the sum of—

1 “(i) the amount of such gifts from the
 2 decedent to members of the decedent’s
 3 family taken into account under subsection
 4 2001(b)(1)(B), plus

5 “(ii) the amount of such gifts other-
 6 wise excluded under section 2503(b),
 7 to the extent such interests are continuously
 8 held by members of such family (other than the
 9 decedent’s spouse) between the date of the gift
 10 and the date of the decedent’s death, over

11 “(B) the amount of such gifts from the de-
 12 cedent to members of the decedent’s family oth-
 13 erwise included in the gross estate.

14 “(c) ADJUSTED GROSS ESTATE.—For purposes of
 15 this section, the term ‘adjusted gross estate’ means the
 16 value of the gross estate (determined without regard to
 17 this section)—

18 “(1) reduced by any amount deductible under
 19 paragraph (3) or (4) of section 2053(a), and

20 “(2) increased by the excess of—

21 “(A) the sum of—

22 “(i) the amount of gifts determined
 23 under subsection (b)(3), plus

24 “(ii) the amount (if more than de-
 25 minimis) of other transfers from the dece-

1 dent to the decedent's spouse (at the time
2 of the transfer) within 10 years of the date
3 of the decedent's death, plus

4 “(iii) the amount of other gifts (not
5 included under clause (i) or (ii)) from the
6 decedent within 3 years of such date, other
7 than gifts to members of the decedent's
8 family otherwise excluded under section
9 2503(b), over

10 “(B) the sum of the amounts described in
11 clauses (i), (ii), and (iii) of subparagraph (A)
12 which are otherwise includible in the gross es-
13 tate.

14 For purposes of the preceding sentence, the Secretary may
15 provide that de minimis gifts to persons other than mem-
16 bers of the decedent's family shall not be taken into ac-
17 count.

18 “(d) ADJUSTED VALUE OF THE QUALIFIED FAMILY-
19 OWNED BUSINESS INTERESTS.—For purposes of this sec-
20 tion, the adjusted value of any qualified family-owned
21 business interest is the value of such interest for purposes
22 of this chapter (determined without regard to this sec-
23 tion), reduced by the excess of—

24 “(1) any amount deductible under paragraph
25 (3) or (4) of section 2053(a), over

1 “(2) the sum of—

2 “(A) any indebtedness on any qualified
3 residence of the decedent the interest on which
4 is deductible under section 163(h)(3), plus

5 “(B) any indebtedness to the extent the
6 taxpayer establishes that the proceeds of such
7 indebtedness were used for the payment of edu-
8 cational and medical expenses of the decedent,
9 the decedent’s spouse, or the decedent’s depend-
10 ents (within the meaning of section 152), plus

11 “(C) any indebtedness not described in
12 clause (i) or (ii), to the extent such indebted-
13 ness does not exceed \$10,000.

14 “(e) QUALIFIED FAMILY-OWNED BUSINESS INTER-
15 EST.—

16 “(1) IN GENERAL.—For purposes of this sec-
17 tion, the term ‘qualified family-owned business inter-
18 est’ means—

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

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

23 “(i) at least—

24 “(I) 50 percent of such entity is
25 owned (directly or indirectly) by the

1 decedent and members of the decedent's family,

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

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

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

12 “(2) LIMITATION.—Such term shall not in-
13 clude—

14 “(A) any interest in a trade or business
15 the principal place of business of which is not
16 located in the United States,

17 “(B) any interest in an entity, if the stock
18 or debt of such entity or a controlled group (as
19 defined in section 267(f)(1)) of which such en-
20 tity was a member was readily tradable on an
21 established securities market or secondary mar-
22 ket (as defined by the Secretary) at any time
23 within 3 years of the date of the decedent's
24 death,

“(C) any interest in a trade or business not described in section 542(c)(2), if more than 35 percent of the adjusted ordinary gross income of such trade or business for the taxable year which includes the date of the decedent’s death would qualify as personal holding company income (as defined in section 543(a)),

“(D) that portion of an interest in a trade or business that is attributable to—

“(i) cash or marketable securities, or both, in excess of the reasonably expected day-to-day working capital needs of such trade or business, and

“(ii) any other assets of the trade or business (other than assets used in the active conduct of a trade or business described in section 542(c)(2)), the income of which is described in section 543(a) or in subparagraph (B), (C), (D), or (E) of section 954(c)(1) (determined by substituting ‘trade or business’ for ‘controlled foreign corporation’).

“(3) RULES REGARDING OWNERSHIP.—

“(A) OWNERSHIP OF ENTITIES.—For purposes 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 qualified family-owned business interest,
 24 and

1 “(ii) this section shall be applied sepa-
2 rately in determining if such interest in
3 any other trade or business is a qualified
4 family-owned business interest.

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

14 “(f) TAX TREATMENT OF FAILURE TO MATERIALLY
15 PARTICIPATE IN BUSINESS OR DISPOSITIONS OF INTER-
16 ESTS.—

17 “(1) IN GENERAL.—There is imposed an addi-
18 tional estate tax if, within 10 years after the date
19 of the decedent’s death and before the date of the
20 qualified heir’s death—

21 “(A) the material participation require-
22 ments described in section 2032A(c)(6)(B) are
23 not met with respect to the qualified family-
24 owned business interest which was acquired (or
25 passed) from the decedent,

1 “(B) the qualified heir disposes of any por-
2 tion of a qualified family-owned business inter-
3 est (other than by a disposition to a member of
4 the qualified heir’s family or through a qualified
5 conservation contribution under section
6 170(h)),

7 “(C) the qualified heir loses United States
8 citizenship (within the meaning of section 877)
9 or with respect to whom an event described in
10 subparagraph (A) or (B) of section 877(e)(1)
11 occurs, and such heir does not comply with the
12 requirements of subsection (g), or

13 “(D) the principal place of business of a
14 trade or business of the qualified family-owned
15 business interest ceases to be located in the
16 United States.

17 “(2) ADDITIONAL ESTATE TAX.—

18 “(A) IN GENERAL.—The amount of the
19 additional estate tax imposed by paragraph (1)
20 shall be equal to—

21 “(i) the applicable percentage of the
22 adjusted tax difference attributable to the
23 qualified family-owned business interest
24 (as determined under rules similar to the
25 rules of section 2032A(c)(2)(B)), plus

1 “(ii) interest on the amount deter-
 2 mined under clause (i) at the underpay-
 3 ment rate established under section 6621
 4 for the period beginning on the date the
 5 estate tax liability was due under this
 6 chapter and ending on the date such addi-
 7 tional estate tax is due.

8 “(B) APPLICABLE PERCENTAGE.—For
 9 purposes of this paragraph, the applicable per-
 10 centage shall be determined under the following
 11 table:

“If the event described in paragraph (1) occurs in the following year of material participation:	The applicable percentage is:
1 through 6	100
7	80
8	60
9	40
10	20.

12 “(g) SECURITY REQUIREMENTS FOR NONCITIZEN
 13 QUALIFIED HEIRS.—

14 “(1) IN GENERAL.—Except upon the applica-
 15 tion of subparagraph (F) or (M) of subsection
 16 (h)(3), if a qualified heir is not a citizen of the Unit-
 17 ed States, any interest under this section passing to
 18 or acquired by such heir (including any interest held
 19 by such heir at a time described in subsection
 20 (f)(1)(C)) shall be treated as a qualified family-

1 owned business interest only if the interest passes or
2 is acquired (or is held) in a qualified trust.

3 “(2) QUALIFIED TRUST.—The term ‘qualified
4 trust’ means a trust—

5 “(A) which is organized under, and gov-
6 erned by, the laws of the United States or a
7 State, and

8 “(B) except as otherwise provided in regu-
9 lations, with respect to which the trust instru-
10 ment requires that at least 1 trustee of the
11 trust be an individual citizen of the United
12 States or a domestic corporation.

13 “(h) OTHER DEFINITIONS AND APPLICABLE
14 RULES.—For purposes of this section—

15 “(1) QUALIFIED HEIR.—The term ‘qualified
16 heir’—

17 “(A) has the meaning given to such term
18 by section 2032A(e)(1), and

19 “(B) includes any active employee of the
20 trade or business to which the qualified family-
21 owned business interest relates if such employee
22 has been employed by such trade or business
23 for a period of at least 10 years before the date
24 of the decedent’s death.

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

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

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

8 “(B) Section 2032A(b)(5) (relating to spe-
9 cial rules for surviving spouses).

10 “(C) Section 2032A(c)(2)(D) (relating to
11 partial dispositions).

12 “(D) Section 2032A(c)(3) (relating to only
13 1 additional tax imposed with respect to any 1
14 portion).

15 “(E) Section 2032A(c)(4) (relating to due
16 date).

17 “(F) Section 2032A(c)(5) (relating to li-
18 ability for tax; furnishing of bond).

19 “(G) Section 2032A(c)(7) (relating to no
20 tax if use begins within 2 years; active manage-
21 ment by eligible qualified heir treated as mate-
22 rial participation).

23 “(H) Section 2032A(e)(10) (relating to
24 community property).

1 “(I) Section 2032A(e)(14) (relating to
2 treatment of replacement property acquired in
3 section 1031 or 1033 transactions).

4 “(J) Section 2032A(f) (relating to statute
5 of limitations).

6 “(K) Section 6166(b)(3) (relating to farm-
7 houses and certain other structures taken into
8 account).

9 “(L) Subparagraphs (B), (C), and (D) of
10 section 6166(g)(1) (relating to acceleration of
11 payment).

12 “(M) Section 6324B (relating to special
13 lien for additional estate tax).

14 “(4) COORDINATION WITH OTHER ESTATE TAX
15 BENEFITS.—If there is a reduction in the value of
16 the gross estate under this section—

17 “(A) the dollar limitation applicable under
18 section 2032A(a)(2), and

19 “(B) the \$1,000,000 amount under section
20 6601(j)(3) (as adjusted),

21 shall each be reduced (but not below zero) by the
22 amount of such reduction.

23 “(i) INFLATION ADJUSTMENT OF EXCLUSION
24 AMOUNT.—

1 “(1) IN GENERAL.—In the case of a taxable
 2 year beginning after December 31, 1998, the dollar
 3 amount in subsection (a)(2) shall be increased by an
 4 amount equal to—

5 “(A) such dollar amount, multiplied by

6 “(B) the cost-of-living adjustment deter-
 7 mined under section 1(f)(3) for the calendar
 8 year in which the taxable year begins, deter-
 9 mined by substituting ‘calendar year 1997’ for
 10 ‘calendar year 1992’ in subparagraph (B)
 11 thereof.

12 “(2) ROUNDING.—If any amount as adjusted
 13 under paragraph (1) is not a multiple of \$1,000
 14 such amount shall be rounded to the next lowest
 15 multiple of \$1,000.”

16 (b) CLERICAL AMENDMENT.—The table of sections
 17 for part III of subchapter A of chapter 11 is amended
 18 by inserting after the item relating to section 2033 the
 19 following new item:

 “Sec. 2033A. Family-owned business exclusion.”

20 (c) EFFECTIVE DATE.—The amendments made by
 21 this section shall apply to estates of decedents dying after
 22 December 31, 1997.

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