

105TH CONGRESS
1ST SESSION

H. R. 1763

To amend the Internal Revenue Code of 1986 to provide an election to exclude from the gross estate of a decedent the value of certain land subject to a qualified conservation easement, and to make technical changes to alternative valuation rules.

IN THE HOUSE OF REPRESENTATIVES

JUNE 3, 1997

Mr. GILCHREST (for himself, Mr. FARR of California, Mrs. MORELLA, Mr. CASTLE, Mr. TOWNS, Mr. BOEHLERT, Mr. FAZIO of California, Mr. EHLERS, Mr. GORDON, Ms. WOOLSEY, Mr. MARTINEZ, Mr. TAYLOR of Mississippi, and Mr. ROMERO-BARCELO), 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 election to exclude from the gross estate of a decedent the value of certain land subject to a qualified conservation easement, and to make technical changes to alternative valuation rules.

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 “Agricultural Land
5 Preservation Act of 1997”.

1 **SEC. 2. TREATMENT OF LAND SUBJECT TO A QUALIFIED**
 2 **CONSERVATION EASEMENT.**

3 (a) ESTATE TAX WITH RESPECT TO LAND SUBJECT
 4 TO A QUALIFIED CONSERVATION EASEMENT.—Section
 5 2031 of the Internal Revenue Code of 1986 (relating to
 6 the definition of gross estate) is amended by redesignating
 7 subsection (c) as subsection (d) and by inserting after sub-
 8 section (b) the following new subsection:

9 “(c) ESTATE TAX WITH RESPECT TO LAND SUB-
 10 JECT TO A QUALIFIED CONSERVATION EASEMENT.—

11 “(1) IN GENERAL.—If the executor makes the
 12 election described in paragraph (4), then, except as
 13 otherwise provided in this subsection, there shall be
 14 excluded from the gross estate the value of land sub-
 15 ject to a qualified conservation easement, reduced by
 16 the amount of any deduction under section 2055(f)
 17 with respect to such land.

18 “(2) TREATMENT OF CERTAIN INDEBTED-
 19 NESS.—

20 “(A) IN GENERAL.—The exclusion pro-
 21 vided in paragraph (1) shall not apply to the
 22 extent that the land is debt-financed property.

23 “(B) DEFINITIONS.—For purposes of this
 24 paragraph—

25 “(i) DEBT-FINANCED PROPERTY.—
 26 The term ‘debt-financed property’ means

1 any property with respect to which there is
2 an acquisition indebtedness (as defined in
3 clause (ii)) on the date of the decedent's
4 death.

5 “(ii) ACQUISITION INDEBTEDNESS.—
6 The term ‘acquisition indebtedness’ means,
7 with respect to debt-financed property, the
8 unpaid amount of—

9 “(I) the indebtedness incurred by
10 the donor in acquiring such property,

11 “(II) the indebtedness incurred
12 before the acquisition of such property
13 if such indebtedness would not have
14 been incurred but for such acquisition.

15 “(III) the indebtedness incurred
16 after the acquisition of such property
17 if such indebtedness would not have
18 been incurred but for such acquisition
19 and the incurrence of such indebted-
20 ness was reasonably foreseeable at the
21 time of such acquisition, except that
22 indebtedness incurred after the acqui-
23 sition of such property is not acquisi-
24 tion indebtedness if incurred to carry
25 on activities directly related to farm-

1 ing, ranching, forestry, horticulture,
2 or viticulture, and

3 “(IV) the extension, renewal, or
4 refinancing of an acquisition indebted-
5 ness.

6 “(3) TREATMENT OF RETAINED DEVELOPMENT
7 RIGHT.—

8 “(A) IN GENERAL.—Paragraph (1) shall
9 not apply to the value of any development right
10 retained by the donor in the conveyance of a
11 qualified conservation easement.

12 “(B) TERMINATION OF RETAINED DEVEL-
13 OPMENT RIGHT.—If every person in being who
14 has an interest (whether or not in possession)
15 in such land shall execute an agreement to ex-
16 tinguish permanently some or all of any devel-
17 opment rights (as defined in subparagraph (D))
18 retained by the donor on or before the date for
19 filing the return of the tax imposed by section
20 2001, then any tax imposed by section 2001
21 shall be reduced accordingly. Such agreement
22 shall be filed with the return of the tax imposed
23 by section 2001. The agreement shall be in
24 such form as the Secretary shall prescribe.

1 “(C) ADDITIONAL TAX.—Failure to imple-
2 ment the agreement described in subparagraph
3 (B) within 2 years of the decedent’s death shall
4 result in the imposition of an additional tax in
5 the amount of tax which would have been due
6 on the retained development rights subject to
7 such agreement. Such additional tax shall be
8 due and payable on the last day of the 6th
9 month following the end of the 2-year period.

10 “(D) DEVELOPMENT RIGHT DEFINED.—
11 For purposes of this paragraph, the term ‘de-
12 velopment right’ means the right to establish or
13 use any structure and the land immediately sur-
14 rounding it for sale (other than the sale of the
15 structure as part of a sale of the entire tract of
16 land subject to the qualified conservation ease-
17 ment), or other commercial purpose which is
18 not subordinate to and directly supportive of
19 the activity of farming, forestry, ranching, hor-
20 ticulture, or viticulture conducted on land sub-
21 ject to the qualified conservation easement in
22 which such right is retained.

23 “(4) ELECTION.—The election under this sub-
24 section shall be made on the return of the tax im-

posed by section 2001. Such an election, once made,
shall be irrevocable.

“(5) CALCULATION OF ESTATE TAX DUE.—An
executor making the election described in paragraph
(4) shall, for purposes of calculating the amount of
tax imposed by section 2001, include the value of
any development right (as defined in paragraph (3))
retained by the donor in the conveyance of such
qualified conservation easement. The computation of
tax on any retained development right prescribed in
this paragraph shall be done in such manner and on
such forms as the Secretary shall prescribe.

“(6) DEFINITIONS.—For purposes of this sub-
section—

“(A) LAND SUBJECT TO A QUALIFIED
CONSERVATION EASEMENT.—The term ‘land
subject to a qualified conservation easement’
means land—

“(i) which is located in or within 50
miles of an area which, on the date of the
decedent’s death, is—

“(I) a metropolitan area (as de-
fined by the Office of Management
and Budget), or

1 “(II) a National Park, National
2 Seashore, or wilderness area des-
3 ignated as part of the National Wil-
4 derness Preservation System,

5 “(ii) which was owned by the decedent
6 or a member of the decedent’s family at all
7 times during the 3-year period ending on
8 the date of the decedent’s death, and

9 “(iii) with respect to which a qualified
10 conservation easement is or has been made
11 by the decedent or a member of the dece-
12 dent’s family.

13 “(B) QUALIFIED CONSERVATION EASE-
14 MENT.—

15 “(i) IN GENERAL.—The term ‘quali-
16 fied conservation easement’ means a quali-
17 fied conservation contribution (as defined
18 in section 170(h)(1)) of a qualified real
19 property interest (as defined in section
20 170(h)(2)(C)), except that in applying sec-
21 tion 170(h) for purposes of this sub-
22 section—

23 “(I) the term ‘qualified real prop-
24 erty interest’ shall not include any
25 structure or building constituting a

certified historic structure (as defined in section 170(h)(4)(B)), and

“(II) the restriction on the use of such interest described in section 170(h)(2)(C) shall include a prohibition on commercial recreational activity, except that the leasing of fishing and hunting rights shall not be considered commercial recreational activity when such leasing is subordinate to the activities of farming, ranching, forestry, horticulture or viticulture.

“(ii) SALES OF QUALIFIED CONSERVATION EASEMENTS TO QUALIFY.—In the case of an easement which would be a qualified conservation easement but for the fact that the easement was sold to the qualified organization—

“(I) such easement shall be treated as a qualified easement for purposes of this subsection, and

“(II) references in this subsection to the donor shall be treated as references to the owner of the land to which the easement relates.

1 “(C) MEMBER OF FAMILY.—The term
2 ‘member of the decedent’s family’ means any
3 member of the family (as defined in section
4 2032A(e)(2)) of the decedent.”

5 “(7) APPLICATION OF THIS SECTION TO INTER-
6 ESTS IN PARTNERSHIPS, CORPORATIONS, AND
7 TRUSTS.—The Secretary shall prescribe regulations
8 applying this section to an interest in a partnership,
9 corporation, or trust which, with respect to the dece-
10 dent, is an interest in a closely held business (within
11 the meaning of paragraph (1) of section 6166(b)).”

12 (b) CARRYOVER BASIS.—Section 1014(a) of such
13 Code (relating to basis of property acquired from a dece-
14 dent) is amended by striking the period at the end of para-
15 graph (3) and inserting “, or” and by adding after para-
16 graph (3) the following new paragraph:

17 “(4) to the extent of the applicability of the ex-
18 clusion described in section 2031(c), the basis in the
19 hands of the decedent.”

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to estates of decedents dying after
22 December 31, 1996.

1 **SEC. 3. GIFT TAX ON LAND SUBJECT TO A QUALIFIED CON-**
2 **SERVATION EASEMENT.**

3 (a) GIFT TAX WITH RESPECT TO LAND SUBJECT TO
4 A QUALIFIED CONSERVATION EASEMENT.—Section 2503
5 of the Internal Revenue Code of 1986 (relating to taxable
6 gifts) is amended by adding at the end the following new
7 subsection:

8 “(h) GIFT TAX WITH RESPECT TO LAND SUBJECT
9 TO A QUALIFIED CONSERVATION EASEMENT.—The trans-
10 fer by gift of land subject to a qualified conservation ease-
11 ment shall not be treated as a transfer of property by gift
12 for purposes of this chapter. For purposes of this sub-
13 section, the term ‘land subject to a qualified conservation
14 easement’ has the meaning given to such term by section
15 2031(c); except that references to the decedent shall be
16 treated as references to the donor and references to the
17 date of the decedent’s death shall be treated as references
18 to the date of the transfer by the donor.”

19 (b) EFFECTIVE DATE.—The amendment made by
20 this section shall apply to gifts made after December 31,
21 1996.

1 **SEC. 4. TREATMENT UNDER ALTERNATE VALUATION OF**
 2 **FARM PROPERTY RULES OF QUALIFIED CON-**
 3 **SERVATION CONTRIBUTIONS AND LAND SUB-**
 4 **JECT TO QUALIFIED CONSERVATION EASE-**
 5 **MENTS.**

6 (a) EXCEPTIONS FROM RECAPTURE RULES FOR
 7 LAND SUBJECT TO QUALIFIED CONSERVATION EASE-
 8 MENT AND QUALIFIED CONSERVATION CONTRIBU-
 9 TIONS.—Subsection (c) of section 2032A of the Internal
 10 Revenue Code of 1986 (relating to alternative valuation
 11 method) is amended by adding at the end the following
 12 new paragraphs:

13 “(8) EXCEPTION FOR LAND SUBJECT TO A
 14 QUALIFIED CONSERVATION EASEMENT.—If qualified
 15 real property is land subject to a qualified conserva-
 16 tion easement (as defined in section 2031(c)), the
 17 preceding paragraphs of this subsection shall not
 18 apply.

19 “(9) QUALIFIED CONSERVATION CONTRIBUTION
 20 IS NOT A DISPOSITION.—A qualified conservation
 21 contribution (as defined in section 170(h)) by gift or
 22 otherwise shall not be deemed a disposition under
 23 subsection (c)(1)(A).”

24 (b) LAND SUBJECT TO A QUALIFIED CONSERVATION
 25 EASEMENT IS NOT DISQUALIFIED.—Paragraph (1) of
 26 section 2032A(b) of such Code (relating to alternative

1 valuation method) is amended by adding at the end the
 2 following new subparagraph:

3 “(E) If property is otherwise qualified real
 4 property, the fact that it is land subject to a
 5 qualified conservation easement (as defined in
 6 section 2031(c)) shall not disqualify it under
 7 this section.”

8 (c) EFFECTIVE DATE.—The amendments made by
 9 this section shall apply to contributions made, and ease-
 10 ments granted, after December 31, 1986.

11 **SEC. 5. QUALIFIED CONSERVATION CONTRIBUTION WHERE**
 12 **SURFACE AND MINERAL RIGHTS ARE SEPA-**
 13 **RATED.**

14 (a) IN GENERAL.—Section 170(h)(5)(B)(ii) of the
 15 Internal Revenue Code of 1986 (relating to special rule)
 16 is amended to read as follows:

17 “(ii) SPECIAL RULE.—With respect to any con-
 18 tribution of property in which the ownership of the
 19 surface estate and mineral interests has been and re-
 20 mains separated, subparagraph (A) shall be treated
 21 as met if the probability of surface mining occurring
 22 on such property is so remote as to be negligible.”

23 (b) EFFECTIVE DATE.—The amendment made by
 24 this section shall apply with respect to contributions made

- 1 after December 31, 1992, in taxable years ending after
- 2 such date.

