

105TH CONGRESS
1ST SESSION

S. 241

To amend the Internal Revenue Code of 1986 to allow a family-owned business exclusion from the gross estate subject to estate tax, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 30, 1997

Mr. MCCAIN 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 allow a family-owned business exclusion from the gross estate subject to estate tax, 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 “American Family-
5 Owned Business Act”.

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

7 (a) IN GENERAL.—Part III of subchapter A of chap-
8 ter 11 of the Internal Revenue Code of 1986 (relating to

1 gross estate) is amended by inserting after section 2033
 2 the following new section:

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

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

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

10 “(2) the sum of—

11 “(A) \$1,500,000, plus

12 “(B) 50 percent of the excess (if any) of
 13 the adjusted value of such interests over
 14 \$1,500,000.

15 “(b) ESTATES TO WHICH SECTION APPLIES.—This
 16 section shall apply to an estate if—

17 “(1) the decedent was (at the date of the dece-
 18 dent’s death) a citizen or resident of the United
 19 States,

20 “(2) the excess of—

21 “(A) the sum of—

22 “(i) the adjusted value of the qualified
 23 family-owned business interests which—

1 “(I) are included in determining
2 the value of the gross estate (without
3 regard to this section), and

4 “(II) are acquired by a qualified
5 heir from, or passed to a qualified
6 heir from, the decedent (within the
7 meaning of section 2032A(e)(9)), plus

8 “(ii) the amount of the adjusted tax-
9 able gifts of such interests from the dece-
10 dent to members of the decedent’s family
11 taken into account under subsection
12 2001(b)(1)(B), to the extent such interests
13 are continuously held by such members be-
14 tween the date of the gift and the date of
15 the decedent’s death, over

16 “(B) the amount included in the gross es-
17 tate under section 2035,

18 exceeds 50 percent of the adjusted gross estate, and

19 “(3) during the 8-year period ending on the
20 date of the decedent’s death there have been periods
21 aggregating 5 years or more during which—

22 “(A) such interests were owned by the de-
23 cedent or a member of the decedent’s family,
24 and

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

6 “(c) ADJUSTED GROSS ESTATE.—For purposes of
 7 this section, the term ‘adjusted gross estate’ means the
 8 value of the gross estate (determined without regard to
 9 this section)—

10 “(1) reduced by any amount deductible under
 11 section 2053(a)(4), and

12 “(2) increased by the excess of—

13 “(A) the sum of—

14 “(i) the amount taken into account
 15 under subsection (b)(2)(B)), plus

16 “(ii) the amount of other gifts from
 17 the decedent to the decedent’s spouse (at
 18 the time of the gift) within 10 years of the
 19 date of the decedent’s death, plus

20 “(iii) the amount of other gifts (not
 21 included under clause (i) or (ii)) from the
 22 decedent within 3 years of such date, over

23 “(B) the amount included in the gross es-
 24 tate under section 2035.

1 “(d) ADJUSTED VALUE OF THE QUALIFIED FAMILY-
 2 OWNED BUSINESS INTERESTS.—For purposes of this sec-
 3 tion, the adjusted value of any qualified family-owned
 4 business interest is the value of such interest for purposes
 5 of this chapter (determined without regard to this sec-
 6 tion), reduced by the excess of—

7 “(1) any amount deductible under section
 8 2053(a)(4), over

9 “(2) the sum of—

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

13 “(B) any indebtedness to the extent the
 14 taxpayer establishes that the proceeds of such
 15 indebtedness were used for the payment of edu-
 16 cational and medical expenses of the decedent,
 17 the decedent’s spouse, or the decedent’s depend-
 18 ents (within the meaning of section 152), plus

19 “(C) any indebtedness not described in
 20 subparagraph (A) or (B), to the extent such in-
 21 debtedness does not exceed \$10,000.

22 “(e) QUALIFIED FAMILY-OWNED BUSINESS
 23 INTEREST.—

“(1) IN GENERAL.—For purposes of this section, the term ‘qualified family-owned business interest’ means—

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

“(B) an interest as a partner in a partnership, or stock in a corporation, carrying on a trade or business, if—

“(i) at least—

“(I) 50 percent of such partnership or corporation is owned (directly or indirectly) by the decedent or members of the decedent’s family,

“(II) 70 percent of such partnership or corporation is so owned by 2 families (including the decedent’s family), or

“(III) 90 percent of such partnership or corporation is so owned by 3 families (including the decedent’s family), and

“(ii) at least 30 percent of such partnership or corporation is so owned by each family described in subclause (II) or (III) of clause (i).

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

3 “(A) any interest in a trade or business
4 the principal place of business of which is not
5 located in the United States;

6 “(B) any interest in—

7 “(i) an entity which had, or

8 “(ii) an entity which is a member of
9 a controlled group (as defined in section
10 267(f)(1)) which had

11 readily tradeable stock or debt on an estab-
12 lished securities market or secondary market
13 (as defined by the Secretary) within 3 years of
14 the date of the decedent’s death;

15 “(C) any interest in a trade or business
16 not described in section 542(c)(2), if more than
17 35 percent of the adjusted ordinary gross in-
18 come of such trade or business for the taxable
19 year which includes the date of the decedent’s
20 death would qualify as personal holding com-
21 pany income (as defined in section 543(a)); and

1 “(D) that portion of an interest in a trade
 2 or business that is attributable to cash or mar-
 3 ketable securities, or both, in excess of the rea-
 4 sonably expected day-to-day working capital
 5 needs of such trade or business.

6 “(3) OWNERSHIP RULES.—

7 “(A) INDIRECT OWNERSHIP.—For pur-
 8 poses of determining indirect ownership under
 9 paragraph (1), rules similar to the rules of
 10 paragraphs (2) and (3) of section 447(e) shall
 11 apply.

12 “(B) TIERED ENTITIES.—For purposes of
 13 this section, if—

14 “(i) a qualified family-owned business
 15 holds an interest in another trade or busi-
 16 ness, and

17 “(ii) such interest would be a qualified
 18 family-owned business interest if held di-
 19 rectly by the family (or families) holding
 20 interests in the qualified family-owned
 21 business meeting the requirements of para-
 22 graph (1)(B),

23 then the value of the qualified family-owned
 24 business shall include the portion attributable
 25 to the interest in the other trade or business.

1 “(f) TAX TREATMENT OF FAILURE TO MATERIALLY
 2 PARTICIPATE IN BUSINESS OR DISPOSITIONS OF
 3 INTERESTS.—

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

8 “(A) the qualified heir ceases to use for
 9 the qualified use (within the meaning of section
 10 2032A(c)(6)(B)) the qualified family-owned
 11 business interest which was acquired (or
 12 passed) from the decedent, or

13 “(B) the qualified heir disposes of any por-
 14 tion of a qualified family-owned business inter-
 15 est (other than by a disposition to a member of
 16 the qualified heir’s family or through a qualified
 17 conservation contribution under section
 18 170(h)).

19 “(2) ADDITIONAL ESTATE TAX.—The amount
 20 of the additional estate tax imposed by paragraph
 21 (1) shall be equal to—

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

1 “(B) interest on the amount determined
 2 under subparagraph (A) at the annual rate of
 3 4 percent for the period beginning on the date
 4 the estate tax liability was due under this chap-
 5 ter and ending on the date such additional es-
 6 tate tax is due.

7 “(g) OTHER DEFINITIONS AND APPLICABLE
 8 RULES.—For purposes of this section—

9 “(1) QUALIFIED HEIR.—The term ‘qualified
 10 heir’—

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

13 “(B) includes any active employee of the
 14 trade or business to which the qualified family-
 15 owned business interest relates if such employee
 16 has been employed by such trade or business
 17 for a period of at least 10 years before the date
 18 of the decedent’s death.

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

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

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

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

3 “(C) Section 2032A(c)(2)(D) (relating to
4 partial dispositions).

5 “(D) Section 2032A(c)(3) (relating to only
6 1 additional tax imposed with respect to any 1
7 portion).

8 “(E) Section 2032A(c)(4) (relating to due
9 date).

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

12 “(G) Section 2032A(c)(7) (relating to no
13 tax if use begins within 2 years; active manage-
14 ment by eligible qualified heir treatment as ma-
15 terial participation).

16 “(H) Section 2032A(e)(10) (relating to
17 community property).

18 “(I) Section 2032A(e)(14) (relating to
19 treatment of replacement property acquired in
20 section 1031 or 1033 transactions).

21 “(J) Section 2032A(f) (relating to statute
22 of limitations).

23 “(K) Section 6166(b)(3) (relating to farm-
24 houses and certain other structures taken into
25 account).

1 “(L) Subparagraphs (B), (C), and (D) of
2 section 6166(g)(1) (relating to acceleration of
3 payment).”

4 (b) CLERICAL AMENDMENT.—The table of sections
5 for part III of subchapter A of chapter 11 of the Internal
6 Revenue Code of 1986 is amended by inserting after the
7 item relating to section 2033 the following new item:

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

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

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