

105TH CONGRESS  
1ST SESSION

# S. 288

To amend the Internal Revenue Code of 1986 to provide families with estate tax relief, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 6, 1997

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

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## A BILL

To amend the Internal Revenue Code of 1986 to provide families with estate tax relief, 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 “Family Estate Tax  
5       Relief Act of 1997”.

6       **SEC. 2. INCREASE IN UNIFIED ESTATE AND GIFT TAX CRED-**

7                       **IT.**

8       (a) ESTATE TAX CREDIT.—

9               (1) IN GENERAL.—Subsection (a) of section  
10       2010 (relating to unified credit against estate tax)

1 is amended by striking “\$192,800” and inserting  
 2 “the applicable credit amount”.

3 (2) APPLICABLE CREDIT AMOUNT.—Section  
 4 2010 is amended by redesignating subsection (c) as  
 5 subsection (d) and by inserting after subsection (b)  
 6 the following new subsection:

7 “(c) APPLICABLE CREDIT AMOUNT.—For purposes  
 8 of this section the applicable credit amount is the amount  
 9 of the tentative tax which would be determined under the  
 10 rate schedule set forth in section 2001(c) if the amount  
 11 with respect to which such tentative tax is to be computed  
 12 were the applicable exclusion amount determined in ac-  
 13 cordance with the following table:

<b>“In the case of estates of decedents dying, and gifts made, during:</b>	<b>The applicable exclusion amount is:</b>
1997 .....	\$675,000
1998 .....	750,000
1999 .....	825,000
2000 .....	860,000
2001 .....	895,000
2002 .....	930,000
2003 .....	965,000
2004 or thereafter .....	\$1,000,000.”

14 (3) CONFORMING AMENDMENTS.—

15 (A) Paragraph (1) of section 6018(a) is  
 16 amended by striking “\$600,000” and inserting  
 17 “the applicable exclusion amount in effect  
 18 under section 2010(c) for the calendar year  
 19 which includes the date of death”.

1 (B) Paragraph (2) of section 2001(c) is  
 2 amended by striking “\$21,040,000” and insert-  
 3 ing “the amount at which the average tax rate  
 4 under this section is 55 percent”.

5 (C) Subparagraph (A) of section  
 6 2102(c)(3) is amended by striking “\$192,800”  
 7 and inserting “the applicable credit amount in  
 8 effect under section 2010(c) for the calendar  
 9 year which includes the date of death”.

10 (b) UNIFIED GIFT TAX CREDIT.—Paragraph (1) of  
 11 section 2505(a) is amended by striking “\$192,800” and  
 12 inserting “the applicable credit amount in effect under  
 13 section 2010(c) for such calendar year”.

14 (c) EFFECTIVE DATE.—The amendments made by  
 15 this subsection shall apply to the estates of decedents  
 16 dying, and gifts made, after December 31, 1996.

17 **SEC. 3. FAMILY-OWNED BUSINESS EXCLUSION.**

18 (a) IN GENERAL.—Part III of subchapter A of chap-  
 19 ter 11 of the Internal Revenue Code of 1986 (relating to  
 20 gross estate) is amended by inserting after section 2033  
 21 the following new section:

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

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

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

4           “(2) \$1,000,000, reduced by the amount of any  
 5           exclusion allowed under this section with respect to  
 6           the estate of a previously deceased spouse of the de-  
 7           cedent.

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

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

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

14           “(B) the sum of—

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

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

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

1 “(ii) the amount (if more than de  
 2 minimis) of other transfers from the dece-  
 3 dent to the decedent’s spouse (at the time  
 4 of the transfer) within 10 years of the date  
 5 of the decedent’s death, plus

6 “(iii) the amount of other gifts (not  
 7 included under clause (i) or (ii)) from the  
 8 decedent within 3 years of such date, other  
 9 than gifts to members of the decedent’s  
 10 family otherwise excluded under section  
 11 2503(b), over

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

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

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

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

3 “(2) the sum of—

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

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

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

16 “(e) QUALIFIED FAMILY-OWNED BUSINESS INTER-  
17 EST.—

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

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

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

25 “(i) at least—



1 “(I) 50 percent of such entity is  
 2 owned (directly or indirectly) by the  
 3 decedent and members of the dece-  
 4 dent’s family,

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

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

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

14 “(2) LIMITATION.—Such term shall not in-  
 15 clude—

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

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

1 within 3 years of the date of the decedent's  
2 death,

3 “(C) any interest in a trade or business  
4 not described in section 542(c)(2), if more than  
5 35 percent of the adjusted ordinary gross in-  
6 come of such trade or business for the taxable  
7 year which includes the date of the decedent's  
8 death would qualify as personal holding com-  
9 pany income (as defined in section 543(a)),

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

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

16 “(ii) any other assets of the trade or  
17 business (other than assets used in the ac-  
18 tive conduct of a trade or business de-  
19 scribed in section 542(c)(2)), the income of  
20 which is described in section 543(a) or in  
21 subparagraph (B), (C), (D), or (E) of sec-  
22 tion 954(c)(1) (determined by substituting  
23 ‘trade or business’ for ‘controlled foreign  
24 corporation’).

25 “(3) RULES REGARDING OWNERSHIP.—

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

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

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

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

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

1 qualified family-owned business interest,  
 2 and

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

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

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

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

23 “(A) the material participation require-  
 24 ments described in section 2032A(c)(6)(B) are  
 25 not met with respect to the qualified family-

owned business interest which was acquired (or passed) from the decedent,

“(B) the qualified heir disposes of any portion of a qualified family-owned business interest (other than by a disposition to a member of the qualified heir’s family or through a qualified conservation contribution under section 170(h)),

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

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

“(2) ADDITIONAL ESTATE TAX.—

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

“(i) the applicable percentage of the adjusted tax difference attributable to the qualified family-owned business interest

1 (as determined under rules similar to the  
2 rules of section 2032A(c)(2)(B)), plus

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

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

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

14 “(g) SECURITY REQUIREMENTS FOR NONCITIZEN  
15 QUALIFIED HEIRS.—

16 “(1) IN GENERAL.—Except upon the applica-  
17 tion of subparagraph (F) or (M) of subsection  
18 (h)(3), if a qualified heir is not a citizen of the

1 United States, any interest under this section pass-  
 2 ing to or acquired by such heir (including any inter-  
 3 est held by such heir at a time described in sub-  
 4 section (f)(1)(C)) shall be treated as a qualified fam-  
 5 ily-owned business interest only if the interest passes  
 6 or is acquired (or is held) in a qualified trust.

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

9 “(A) which is organized under, and gov-  
 10 erned by, the laws of the United States or a  
 11 State, and

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

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

19 “(1) QUALIFIED HEIR.—The term ‘qualified  
 20 heir’—

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

23 “(B) includes any active employee of the  
 24 trade or business to which the qualified family-  
 25 owned business interest relates if such employee

1           has been employed by such trade or business  
2           for a period of at least 10 years before the date  
3           of the decedent's 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(b)(5) (relating to spe-  
12           cial rules for surviving spouses).

13                   “(C) Section 2032A(c)(2)(D) (relating to  
14           partial dispositions).

15                   “(D) Section 2032A(c)(3) (relating to only  
16           1 additional tax imposed with respect to any 1  
17           portion).

18                   “(E) Section 2032A(c)(4) (relating to due  
19           date).

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

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



1           “(H) Section 2032A(e)(10) (relating to  
2           community property).

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

6           “(J) Section 2032A(f) (relating to statute  
7           of limitations).

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

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

14          “(M) Section 6324B (relating to special  
15          lien for additional estate tax).”.

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, 1996.

1 **SEC. 4. PORTION OF ESTATE TAX SUBJECT TO 4-PERCENT**  
 2 **INTEREST RATE INCREASED TO TAX ATTRIB-**  
 3 **UTABLE TO FIRST \$1,000,000 IN EXCESS OF**  
 4 **THE CREDIT AMOUNT.**

5 (a) IN GENERAL.—Section 6601(j)(2) (defining 4-  
 6 percent portion) is amended to read as follows:

7 “(2) 4-PERCENT PORTION.—For purposes of  
 8 this subsection, the term ‘4-percent portion’ means  
 9 the lesser of—

10 “(A) so much of the tax imposed by chap-  
 11 ter 11 which is extended as provided in section  
 12 6166 as is in excess of the amount of the credit  
 13 allowable under section 2010(a), or

14 “(B) the amount of the tentative tax which  
 15 would be determined under the rate schedule  
 16 set forth in section 2001(c) if the amount with  
 17 respect to which such tentative tax is to be  
 18 computed were \$1,000,000.”

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

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