

105TH CONGRESS
1ST SESSION

S. 482

To amend the Internal Revenue Code of 1986 to partially exclude from the gross estate of a decedent the value of a family-owned business, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 20, 1997

Ms. COLLINS (for herself, Ms. SNOWE, Mr. HATCH, and Mr. COCHRAN) 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 partially exclude from the gross estate of a decedent the value of a family-owned business, 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 Business and
5 Family Farm Preservation Act of 1997”.

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) \$400,000, plus

12 “(B) 50 percent of the excess (if any) of
 13 the adjusted value of such interests over
 14 \$400,000, but not over \$1,500,000.

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

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

18 “(A) the decedent was (at the date of the
 19 decedent’s death) a citizen or resident of the
 20 United States,

21 “(B) the sum of—

22 “(i) the adjusted value of the qualified
 23 family-owned business interests described
 24 in paragraph (2), plus

1 “(ii) the amount of the gifts of such
 2 interests determined under paragraph (3),
 3 exceeds 50 percent of the adjusted gross estate,
 4 and

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

9 “(i) such interests were owned by the
 10 decedent or a member of the decedent’s
 11 family, and

12 “(ii) there was material participation
 13 (within the meaning of section
 14 2032A(e)(6)) by the decedent or a member
 15 of the decedent’s family in the operation of
 16 the business to which such interests relate.

17 “(2) INCLUDIBLE QUALIFIED FAMILY-OWNED
 18 BUSINESS INTERESTS.—The qualified family-owned
 19 business interests described in this paragraph are
 20 the interests which—

21 “(A) are included in determining the value
 22 of the gross estate (without regard to this sec-
 23 tion), and

24 “(B) are acquired by any qualified heir
 25 from, or passed to any qualified heir from, the

1 decedent (within the meaning of section
2 2032A(e)(9)).

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

7 “(A) the sum of—

8 “(i) the amount of such gifts from the
9 decedent to members of the decedent’s
10 family taken into account under subsection
11 2001(b)(1)(B), plus

12 “(ii) the amount of such gifts other-
13 wise excluded under section 2503(b),
14 to the extent such interests are continuously
15 held by members of such family (other than the
16 decedent’s spouse) between the date of the gift
17 and the date of the decedent’s death, over

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

21 “(c) ADJUSTED GROSS ESTATE.—For purposes of
22 this section, the term ‘adjusted gross estate’ means the
23 value of the gross estate (determined without regard to
24 this section)—

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

3 “(2) increased by the excess of—

4 “(A) the sum of—

5 “(i) the amount of gifts determined
6 under subsection (b)(3), plus

7 “(ii) the amount (if more than de
8 minimis) of other transfers from the dece-
9 dent to the decedent’s spouse (at the time
10 of the transfer) within 10 years of the date
11 of the decedent’s death, plus

12 “(iii) the amount of other gifts (not
13 included under clause (i) or (ii)) from the
14 decedent within 3 years of such date, other
15 than gifts to members of the decedent’s
16 family otherwise excluded under section
17 2503(b), over

18 “(B) the sum of the amounts described in
19 clauses (i), (ii), and (iii) of subparagraph (A)
20 which are otherwise includible in the gross es-
21 tate.

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

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 paragraph
 8 (3) or (4) of section 2053(a), 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 clause (i) or (ii), to the extent such indebted-
 21 ness does not exceed \$10,000.

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

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

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

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

8 “(i) at least—

9 “(I) 50 percent of such entity is
 10 owned (directly or indirectly) by the
 11 decedent and members of the dece-
 12 dent’s family,

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

15 “(III) 90 percent of such entity
 16 is so owned by members of 3 families,
 17 and

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

22 “(2) LIMITATION.—Such term shall not in-
 23 clude—

1 “(A) any interest in a trade or business
2 the principal place of business of which is not
3 located in the United States,

4 “(B) any interest in an entity, if the stock
5 or debt of such entity or a controlled group (as
6 defined in section 267(f)(1)) of which such en-
7 tity was a member was readily tradable on an
8 established securities market or secondary mar-
9 ket (as defined by the Secretary) at any time
10 within 3 years of the date of the decedent’s
11 death,

12 “(C) any interest in a trade or business
13 not described in section 542(c)(2), if more than
14 35 percent of the adjusted ordinary gross in-
15 come of such trade or business for the taxable
16 year which includes the date of the decedent’s
17 death would qualify as personal holding com-
18 pany income (as defined in section 543(a)),

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

21 “(i) cash or marketable securities, or
22 both, in excess of the reasonably expected
23 day-to-day working capital needs of such
24 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)—

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

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

“(B) OWNERSHIP OF TIERED ENTITIES.—

For purposes of this section, if by reason of

1 holding an interest in a trade or business, a de-
2 cendent, any member of the decedent's family,
3 any qualified heir, or any member of any quali-
4 fied heir's family is treated as holding an inter-
5 est in any other trade or business—

6 “(i) such ownership interest in the
7 other trade or business shall be dis-
8 regarded in determining if the ownership
9 interest in the first trade or business is a
10 qualified family-owned business interest,
11 and

12 “(ii) this section shall be applied sepa-
13 rately in determining if such interest in
14 any other trade or business is a qualified
15 family-owned business interest.

16 “(C) INDIVIDUAL OWNERSHIP RULES.—

17 For purposes of this section, an interest owned,
18 directly or indirectly, by or for an entity de-
19 scribed in paragraph (1)(B) shall be considered
20 as being owned proportionately by or for the en-
21 tity's shareholders, partners, or beneficiaries. A
22 person shall be treated as a beneficiary of any
23 trust only if such person has a present interest
24 in such trust.

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

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 material participation require-
 9 ments described in section 2032A(c)(6)(B) are
 10 not met with respect to the qualified family-
 11 owned business interest which was acquired (or
 12 passed) from the decedent,

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 “(C) the qualified heir loses United States
 20 citizenship (within the meaning of section 877)
 21 or with respect to whom an event described in
 22 subparagraph (A) or (B) of section 877(e)(1)
 23 occurs, and such heir does not comply with the
 24 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 (as determined under rules similar to the rules of section 2032A(c)(2)(B)), plus

“(ii) interest on the amount determined under clause (i) at the underpayment rate established under section 6621 for the period beginning on the date the estate tax liability was due under this chapter and ending on the date such additional estate tax is due.

“(B) APPLICABLE PERCENTAGE.—For purposes of this paragraph, the applicable percentage shall be determined under the following 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.

1 “(g) SECURITY REQUIREMENTS FOR NONCITIZEN
2 QUALIFIED HEIRS.—

3 “(1) IN GENERAL.—Except upon the applica-
4 tion of subparagraph (F) or (M) of subsection
5 (h)(3), if a qualified heir is not a citizen of the Unit-
6 ed States, any interest under this section passing to
7 or acquired by such heir (including any interest held
8 by such heir at a time described in subsection
9 (f)(1)(C)) shall be treated as a qualified family-
10 owned business interest only if the interest passes or
11 is acquired (or is held) in a qualified trust.

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

14 “(A) which is organized under, and gov-
15 erned by, the laws of the United States or a
16 State, and

17 “(B) except as otherwise provided in regu-
18 lations, with respect to which the trust instru-
19 ment requires that at least 1 trustee of the
20 trust be an individual citizen of the United
21 States or a domestic corporation.

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

3 “(1) QUALIFIED HEIR.—The term ‘qualified
4 heir’—

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

7 “(B) includes any active employee of the
8 trade or business to which the qualified family-
9 owned business interest relates if such employee
10 has been employed by such trade or business
11 for a period of at least 10 years before the date
12 of the decedent’s death.

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

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

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

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

22 “(C) Section 2032A(c)(2)(D) (relating to
23 partial dispositions).

1 “(D) Section 2032A(c)(3) (relating to only
2 1 additional tax imposed with respect to any 1
3 portion).

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

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

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

12 “(H) Section 2032A(e)(10) (relating to
13 community property).

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

17 “(J) Section 2032A(f) (relating to statute
18 of limitations).

19 “(K) Section 6166(b)(3) (relating to farm-
20 houses and certain other structures taken into
21 account).

22 “(L) Subparagraphs (B), (C), and (D) of
23 section 6166(g)(1) (relating to acceleration of
24 payment).

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

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

6 “(A) the dollar limitation applicable under
7 section 2032A(a)(2), and

8 “(B) the \$1,000,000 amount under section
9 6601(j)(3) (as adjusted),
10 shall each be reduced (but not below zero) by the
11 amount of such reduction.”

12 (b) CONFORMING AMENDMENT.—The table of sec-
13 tions for part III of subchapter A of chapter 11 of the
14 Internal Revenue Code of 1986 is amended by inserting
15 after the item relating to section 2033 the following new
16 item:

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

17 (c) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to estates of decedents dying after
19 the date of enactment of this Act.

20 **SEC. 3. 20-YEAR INSTALLMENT PAYMENT WHERE ESTATE**
21 **CONSISTS LARGELY OF INTEREST IN CLOSE-**
22 **LY HELD BUSINESS.**

23 (a) IN GENERAL.—Section 6166(a) (relating to ex-
24 tension of time for payment of estate tax where estate con-
25 sists largely of interest in closely held business) is amend-

1 ed by striking “10” in paragraph (1) and the heading
2 thereof and inserting “20”.

3 (b) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to estates of decedents dying after
5 the date of enactment of this Act.

○