

105TH CONGRESS
1ST SESSION

S. 499

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 SENATE OF THE UNITED STATES

MARCH 20, 1997

Mr. CHAFEE (for himself, Mr. BAUCUS, and Mr. GREGG) 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 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 “American Farm and
5 Ranch Protection 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.

16 “(2) TREATMENT OF CERTAIN INDEBTED-
 17 NESS.—

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

21 “(B) DEFINITIONS.—For purposes of this
 22 paragraph—

23 “(i) DEBT-FINANCED PROPERTY.—

24 The term ‘debt-financed property’ means
 25 any property with respect to which there is
 26 an acquisition indebtedness (as defined in

1 clause (ii)) on the date of the decedent's
2 death.

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

7 “(I) the indebtedness incurred by
8 the donor in acquiring such property,

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

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

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

4 “(3) TREATMENT OF RETAINED DEVELOPMENT
 5 RIGHT.—

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

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

23 “(C) ADDITIONAL TAX.—Failure to imple-
 24 ment the agreement described in subparagraph
 25 (B) within 2 years of the decedent’s death shall

1 result in the imposition of an additional tax in
 2 the amount of tax which would have been due
 3 on the retained development rights subject to
 4 such agreement. Such additional tax shall be
 5 due and payable on the last day of the 6th
 6 month following the end of the 2-year period.

7 “(D) DEVELOPMENT RIGHT DEFINED.—

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

20 “(4) ELECTION.—The election under this sub-
 21 section shall be made on the return of the tax im-
 22 posed by section 2001. Such an election, once made,
 23 shall be irrevocable.

24 “(5) CALCULATION OF ESTATE TAX DUE.—An
 25 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 subsection—

“(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—

“(I) is a metropolitan area (as defined by the Office of Management and Budget),

“(II) is a National Park or wilderness area designated as part of the National Wilderness Preservation System (unless it is determined by the Secretary that land in or within 50

1 miles of such a park or wilderness
 2 area is not under significant develop-
 3 ment pressure), or

4 “(III) is an Urban National For-
 5 est (as designated by the Forest Serv-
 6 ice),

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

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

15 “(B) QUALIFIED CONSERVATION EASE-
 16 MENT.—The term ‘qualified conservation ease-
 17 ment’ means a qualified conservation contribu-
 18 tion (as defined in section 170(h)(1)) of a quali-
 19 fied real property interest (as defined in section
 20 170(h)(2)(C)), except that for this purpose the
 21 term ‘qualified real property interest’ shall not
 22 include any structure or building constituting ‘a
 23 certified historic structure’ as defined in section
 24 170(h)(4)(B), and the restriction on the use of
 25 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.

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

“(7) APPLICATION OF THIS SECTION TO INTERESTS IN PARTNERSHIPS, CORPORATIONS, AND TRUSTS.—The Secretary shall prescribe regulations applying this section to an interest in a partnership, corporation, or trust which, with respect to the decedent, is an interest in a closely held business (within the meaning of paragraph (1) of section 6166(b)).”

(b) CARRYOVER BASIS.—Section 1014(a) of such Code (relating to basis of property acquired from a decedent) is amended by striking the period at the end of paragraph (3) and inserting “, or” and by adding after paragraph (3) the following new paragraph:

1 “(4) to the extent of the applicability of the ex-
 2 clusion described in section 2031(c), the basis in the
 3 hands of the decedent.”

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

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

9 (a) GIFT TAX WITH RESPECT TO LAND SUBJECT TO
 10 A QUALIFIED CONSERVATION EASEMENT.—Section 2503
 11 of the Internal Revenue Code of 1986 (relating to taxable
 12 gifts) is amended by adding at the end the following new
 13 subsection:

14 “(h) GIFT TAX WITH RESPECT TO LAND SUBJECT
 15 TO A QUALIFIED CONSERVATION EASEMENT.—The trans-
 16 fer by gift of land subject to a qualified conservation ease-
 17 ment shall not be treated as a transfer of property by gift
 18 for purposes of this chapter. For purposes of this sub-
 19 section, the term ‘land subject to a qualified conservation
 20 easement’ has the meaning given to such term by section
 21 2031(c); except that references to the decedent shall be
 22 treated as references to the donor and references to the
 23 date of the decedent’s death shall be treated as references
 24 to the date of the transfer by the donor.”

1 (b) EFFECTIVE DATE.—The amendment made by
 2 this section shall apply to gifts made after December 31,
 3 1996.

4 **SEC. 4. QUALIFIED CONSERVATION CONTRIBUTION IS NOT**
 5 **A DISPOSITION.**

6 (a) QUALIFIED CONSERVATION CONTRIBUTION IS
 7 NOT A DISPOSITION.—Subsection (c) of section 2032A of
 8 the Internal Revenue Code of 1986 (relating to alternative
 9 valuation method) is amended by adding at the end the
 10 following new paragraphs:

11 “(8) QUALIFIED CONSERVATION CONTRIBUTION
 12 IS NOT A DISPOSITION.—A qualified conservation
 13 contribution (as defined in section 170(h)) by gift or
 14 otherwise shall not be deemed a disposition under
 15 subsection (c)(1)(A).

16 “(9) EXCEPTION FOR REAL PROPERTY IS LAND
 17 SUBJECT TO A QUALIFIED CONSERVATION EASE-
 18 MENT.—If qualified real property is land subject to
 19 a qualified conservation easement (as defined in sec-
 20 tion 2031(c)), the preceding paragraphs of this sub-
 21 section shall not apply.”

22 (b) LAND SUBJECT TO A QUALIFIED CONSERVATION
 23 EASEMENT IS NOT DISQUALIFIED.—Subsection (b) of
 24 section 2032A of such Code (relating to alternative valu-

1 ation method) is amended by adding at the end the follow-
 2 ing paragraph:

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 with respect to contributions made,
 10 and easements granted, after December 31, 1996.

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.

