

106TH CONGRESS  
1ST SESSION

# S. 1392

To amend the Internal Revenue Code of 1986 to provide tax incentives for the voluntary conservation of endangered species, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 19, 1999

Mr. BAUCUS 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 tax incentives for the voluntary conservation of endangered species, 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; AMENDMENT OF 1986 CODE.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Species Conservation Tax Act of 1999”.

6       (b) AMENDMENT OF 1986 CODE.—Except as other-  
7       wise expressly provided, whenever in this Act an amend-  
8       ment or repeal is expressed in terms of an amendment  
9       to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-  
 2 sion of the Internal Revenue Code of 1986.

3 **SEC. 2. TAX EXCLUSION FOR COST-SHARING PAYMENTS**  
 4 **UNDER PARTNERS FOR WILDLIFE PROGRAM.**

5 (a) IN GENERAL.—Section 126(a) (relating to cer-  
 6 tain cost-sharing payments) is amended by redesignating  
 7 paragraph (10) as paragraph (11) and by inserting after  
 8 paragraph (9) the following:

9 “(10) The Partners for Fish and Wildlife Pro-  
 10 gram authorized by the Fish and Wildlife Act of  
 11 1956 (16 U.S.C. 742a et seq.).”

12 (b) EFFECTIVE DATE.—The amendments made by  
 13 this section shall apply to payments received after the date  
 14 of the enactment of this Act.

15 **SEC. 3. ENHANCED DEDUCTION FOR THE DONATION OF A**  
 16 **CONSERVATION EASEMENT.**

17 (a) IN GENERAL.—Subparagraph (A) of section  
 18 170(h)(4) (defining conservation purpose) is amended by  
 19 striking “or” at the end of clause (iii), by striking the pe-  
 20 riod at the end of clause (iv) and inserting “, or”, and  
 21 by adding at the end the following:

22 “(v) the conservation of a species des-  
 23 ignated by the Secretary of the Interior or  
 24 the Secretary of Commerce under the En-  
 25 dangered Species Act of 1973 (16 U.S.C.

1531 et seq) as endangered or threatened,  
 proposed by such Secretary for designation  
 as endangered or threatened, or identified  
 by such Secretary as a candidate for such  
 designation, provided the property is not  
 required, as of the date of contribution, to  
 be used for such purpose other than by  
 reason of the terms of contribution.”

(b) ENHANCED DEDUCTIONS.—Subsection (e) of sec-  
 tion 170 (defining qualified conservation contribution) is  
 amended by adding at the end the following:

“(7) SPECIAL RULES FOR CONTRIBUTIONS RE-  
 LATED TO CONSERVATION OF SPECIES.—

“(A) IN GENERAL.—In the case of a quali-  
 fied conservation contribution by an individual  
 for the conservation of endangered or threat-  
 ened species, proposed species, or candidate  
 species under (h)(4)(v):

“(i) 50 PERCENT LIMITATION TO  
 APPLY.—Such a contribution shall be  
 treated for the purposes of this section as  
 described in subsection (b)(1)(A).

“(ii) 20-YEAR CARRY FORWARD.—  
 Subsection (d)(1) shall be applied by sub-  
 stituting ‘20 years’ for ‘5 years’ each place

1 it appears and with appropriate adjust-  
 2 ments in the application of subparagraph  
 3 (A)(ii) thereof.

4 “(iii) UNUSED DEDUCTION CARRY-  
 5 OVER ALLOWED ON TAXPAYER’S LAST RE-  
 6 TURN.—If the taxpayer dies before the  
 7 close of the last taxable year for which a  
 8 deduction could have been allowed under  
 9 subsection (d)(1), any portion of the de-  
 10 duction for such contribution which has  
 11 not been allowed shall be allowed as a de-  
 12 duction under subsection (a) (without re-  
 13 gard to subsection (b)) for the taxable year  
 14 in which such death occurs or such portion  
 15 may be used as a deduction against the  
 16 gross estate of the taxpayer.”

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

20 **SEC. 4. EXCLUSION FROM ESTATE TAX FOR REAL PROP-**  
 21 **ERTY SUBJECT TO ENDANGERED SPECIES**  
 22 **CONSERVATION AGREEMENT.**

23 (a) IN GENERAL.—Part IV of subchapter A of chap-  
 24 ter 11 of the Internal Revenue Code of 1986 (relating to

1 taxable estate) is amended by adding at the end the fol-  
 2 lowing new section:

3 **“SEC. 2058. CERTAIN REAL PROPERTY SUBJECT TO ENDAN-**  
 4 **GERED SPECIES CONSERVATION AGREE-**  
 5 **MENT.**

6 “(a) GENERAL RULE.—For purposes of the tax im-  
 7 posed by section 2001, the value of the taxable estate shall  
 8 be determined by deducting from the value of the gross  
 9 estate an amount equal to lesser of—

10 “(1) the adjusted value of real property in-  
 11 cluded in the gross estate which is subject to an en-  
 12 dangered species conservation agreement, or

13 “(2) \$10,000,000.

14 “(b) PROPERTY SUBJECT TO AN ENDANGERED SPE-  
 15 CIES CONSERVATION AGREEMENT.—For purposes of this  
 16 section—

17 “(1) IN GENERAL.—Real property shall be  
 18 treated as subject to an endangered species con-  
 19 servation agreement if—

20 “(A) such property was owned by the dece-  
 21 dent or a member of the decedent’s family at all  
 22 times during the 3-year period ending on the  
 23 date of the decedent’s death,

1           “(B) each person who has an interest in  
2           such property (whether or not in possession)  
3           has entered into—

4                   “(i) an endangered species conserva-  
5                   tion agreement with respect to such prop-  
6                   erty, and

7                   “(ii) a written agreement with the  
8                   Secretary consenting to the application of  
9                   subsection (d), and

10           “(C) the executor of the decedent’s  
11           estate—

12                   “(i) elects the application of this sec-  
13                   tion, and

14                   “(ii) files with the Secretary such en-  
15                   dangered species conservation agreement.

16           “(2) ADJUSTED VALUE.—

17                   “(A) IN GENERAL.—The adjusted value of  
18                   any real property shall be its value for purposes  
19                   of this chapter, reduced by—

20                   “(i) any amount deductible under sec-  
21                   tion 2055(f) with respect to the property,  
22                   and

23                   “(ii) any acquisition indebtedness with  
24                   respect to the property.

1           “(B) ACQUISITION INDEBTEDNESS.—For  
 2           purposes of this paragraph, the term ‘acqui-  
 3           sition indebtedness’ means, with respect to any  
 4           real property, the unpaid amount of—

5                   “(i) the indebtedness incurred by the  
 6                   donor in acquiring such property,

7                   “(ii) the indebtedness incurred before  
 8                   the acquisition of such property if such in-  
 9                   debtedness would not have been incurred  
 10                  but for such acquisition,

11                  “(iii) the indebtedness incurred after  
 12                  the acquisition of such property if such in-  
 13                  debtedness would not have been incurred  
 14                  but for such acquisition and the incurrence  
 15                  of such indebtedness was reasonably fore-  
 16                  seeable at the time of such acquisition, and

17                  “(iv) the extension, renewal, or refi-  
 18                  nancing of an acquisition indebtedness.

19           “(c) ENDANGERED SPECIES CONSERVATION AGREE-  
 20           MENT.—For purposes of this section—

21                   “(1) IN GENERAL.—The term ‘endangered spe-  
 22                   cies conservation agreement’ means a written agree-  
 23                   ment entered into with the Secretary of the Interior  
 24                   or the Secretary of Commerce—

1           “(A) which commits each person who  
 2           signed such agreement to carry out on the real  
 3           property activities or practices not otherwise re-  
 4           quired by law or to refrain from carrying out on  
 5           such property activities or practices that could  
 6           otherwise be lawfully carried out and includes—

7                   “(i) objective and measurable species  
 8                   of concern conservation goals,

9                   “(ii) site-specific and other manage-  
 10                  ment measures necessary to achieve those  
 11                  goals, and

12                  “(iii) objective and measurable criteria  
 13                  to monitor progress toward those goals,

14           “(B) which is certified by such Secretary  
 15           as providing a major contribution to the con-  
 16           servation of a species of concern, and

17           “(C) which is for a term that such Sec-  
 18           retary determines is sufficient to achieve the  
 19           purposes of the agreement, but not less than 10  
 20           years beginning on the date of the decedent’s  
 21           death.

22           “(2) SPECIES OF CONCERN.—The term ‘species  
 23           of concern’ means any species designated by the Sec-  
 24           retary of the Interior or the Secretary of Commerce  
 25           under the Endangered Species Act of 1973 (16



1 U.S.C. 1531 et seq) as endangered or threatened,  
 2 proposed by such Secretary for designation as en-  
 3 dangered or threatened, or identified by such Sec-  
 4 retary as a candidate for such designation.

5 “(3) ANNUAL CERTIFICATION TO THE SEC-  
 6 RETARY BY THE SECRETARY OF THE INTERIOR OR  
 7 THE SECRETARY OF COMMERCE OF THE STATUS OF  
 8 ENDANGERED SPECIES CONSERVATION AGREE-  
 9 MENTS.—If the executor elects the application of  
 10 this section, the executor shall promptly give written  
 11 notice of such election to the Secretary of the Inte-  
 12 rior or the Secretary of Commerce. The Secretary of  
 13 the Interior or the Secretary of Commerce shall  
 14 thereafter annually certify to the Secretary that the  
 15 endangered species conservation agreement applica-  
 16 ble to any property for which such election has been  
 17 made remains in effect and is being satisfactorily  
 18 complied with.

19 “(d) RECAPTURE OF TAX BENEFIT IN CERTAIN  
 20 CASES.—

21 “(1) DISPOSITION OF INTEREST OR MATERIAL  
 22 BREACH.—

23 “(A) IN GENERAL.—An additional tax in  
 24 the amount determined under subparagraph

(B) shall be imposed on any person on the earlier of—

“(i) the disposition by such person of any interest in property subject to an endangered species conservation agreement (other than a disposition described in subparagraph (C)),

“(ii) a material breach by such person of the endangered species conservation agreement, or

“(iii) the termination of the endangered species conservation agreement.

“(B) AMOUNT OF ADDITIONAL TAX.—

“(i) IN GENERAL.—The amount of the additional tax imposed by subparagraph (A) with respect to any interest shall be an amount equal to the applicable percentage of the lesser of—

“(I) the adjusted tax difference attributable to such interest (within the meaning of section 2032A(c)(2)(B)), or

“(II) the excess of the amount realized with respect to the interest (or, in any case other than a sale or

1 exchange at arm's length, the fair  
 2 market value of the interest) over the  
 3 value of the interest determined under  
 4 subsection (a).

5 “(ii) APPLICABLE PERCENTAGE.—For  
 6 purposes of clause (i), the applicable per-  
 7 centage is determined in accordance with  
 8 the following table:

<b>“If, with respect to the date of the agreement, the date of the event described in subparagraph (A) occurs—</b>	<b>The applicable percentage is—</b>
Before 10 years .....	100
After 9 years and before 20 years .....	75
After 19 years and before 30 years .....	50
After 29 years and before 40 years .....	25
After 39 .....	0.

9 “(C) EXCEPTION IF CERTAIN HEIRS AS-  
 10 SUME OBLIGATIONS UPON THE DEATH OF A  
 11 PERSON EXECUTING THE AGREEMENT.—Sub-  
 12 paragraph (A)(i) shall not apply if—

13 “(i) upon the death of a person de-  
 14 scribed in subsection (b)(1)(B) during the  
 15 term of such agreement, the property sub-  
 16 ject to such agreement passes to a member  
 17 of the person's family, and

18 “(ii) the member agrees—

19 “(I) to assume the obligations  
 20 imposed on such person under the en-

1           endangered species conservation agree-  
2           ment,

3                   “(II) to assume personal liability  
4           for any tax imposed under subpara-  
5           graph (A) with respect to any future  
6           event described in subparagraph (A),  
7           and

8                   “(III) to notify the Secretary of  
9           the Treasury and the Secretary of the  
10          Interior or the Secretary of Commerce  
11          that the member has assumed such  
12          obligations and liability.

13          If a member of the person’s family enters into  
14          an agreement described in subclauses (I), (II),  
15          and (III), such member shall be treated as sig-  
16          natory to the endangered species conservation  
17          agreement the person entered into.

18          “(2) DUE DATE OF ADDITIONAL TAX.—The ad-  
19          ditional tax imposed by paragraph (1) shall become  
20          due and payable on the day that is 6 months after  
21          the date of the disposition referred to in paragraph  
22          (1)(A)(i) or, in the case of an event described in  
23          clause (ii) or (iii) of paragraph (1)(A), on April 15  
24          of the calendar year following any year in which the  
25          Secretary of the Interior or the Secretary of Com-

1       merce fails to provide the certification required  
2       under subsection (c)(3).

3       “(e) STATUTE OF LIMITATIONS.—If a taxpayer in-  
4       curs a tax liability pursuant to subsection (d)(1)(A),  
5       then—

6               “(1) the statutory period for the assessment of  
7       any additional tax imposed by subsection (d)(1)(A)  
8       shall not expire before the expiration of 3 years from  
9       the date the Secretary is notified (in such manner  
10      as the Secretary may by regulation prescribe) of the  
11      incurring of such tax liability, and

12              “(2) such additional tax may be assessed before  
13      the expiration of such 3-year period notwithstanding  
14      the provisions of any other law or rule of law that  
15      would otherwise prevent such assessment.

16      “(f) ELECTION AND FILING OF AGREEMENT.—The  
17      election under this section shall be made on the return  
18      of the tax imposed by section 2001. Such election, and  
19      the filing under subsection (b) of an endangered species  
20      conservation agreement, shall be made in such manner as  
21      the Secretary shall by regulation provide.

22      “(g) APPLICATION OF THIS SECTION TO INTERESTS  
23      IN PARTNERSHIPS, CORPORATIONS, AND TRUSTS.—This  
24      section shall apply to an interest in a partnership, corpora-  
25      tion, or trust if at least 30 percent of the entity is owned

1 (directly or indirectly) by the decedent, as determined  
 2 under the rules described in section 2057(e)(3).

3 “(h) MEMBER OF FAMILY.—For purposes of this sec-  
 4 tion, the term ‘member of the family’ means any member  
 5 of the family (as defined in section 2032A(e)(2)) of the  
 6 decedent.”

7 (b) CARRYOVER BASIS.—Section 1014(a)(4) of the  
 8 Internal Revenue Code of 1986 (relating to basis of prop-  
 9 erty acquired from a decedent) is amended by inserting  
 10 “or 2058” after “section 2031(c)”.

11 (c) CLERICAL AMENDMENT.—The table of sections  
 12 for part IV of subchapter A of chapter 11 of the Internal  
 13 Revenue Code of 1986 is amended by adding at the end  
 14 the following new item:

“Sec. 2058. Certain real property subject to endangered species  
 conservation agreement.”

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

18 **SEC. 5. EXPANSION OF ESTATE TAX EXCLUSION FOR REAL**  
 19 **PROPERTY SUBJECT TO QUALIFIED CON-**  
 20 **SERVATION EASEMENT.**

21 (a) REPEAL OF CERTAIN RESTRICTIONS ON WHERE  
 22 LAND IS LOCATED.—Clause (i) of section 2031(c)(8)(A)  
 23 (defining land subject to a qualified conservation ease-  
 24 ment) is amended to read as follows:

1                   “(i) which is located in the United  
2                   States or any possession of the United  
3                   States,”.

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

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