

106TH CONGRESS
1ST SESSION

S. 963

To amend the Internal Revenue Code of 1986 to preserve family-held forest lands, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 5, 1999

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 preserve family-held forest lands, 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 “Family Forest Land Preservation 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 **TITLE I—ESTATE TAX** 4 **PROVISIONS**

5 **SEC. 101. EXCLUSION FOR LAND SUBJECT TO A QUALIFIED** 6 **CONSERVATION EASEMENT.**

7 (a) IN GENERAL.—Section 2031(c) (relating to es-
 8 tate tax with respect to land subject to a qualified con-
 9 servation easement) is amended to read as follows:

10 “(c) ESTATE TAX WITH RESPECT TO LAND SUB-
 11 JECT TO A QUALIFIED CONSERVATION EASEMENT.—

12 “(1) IN GENERAL.—If the executor makes the
 13 election described in paragraph (4), then, except as
 14 otherwise provided in this subsection, there shall be
 15 excluded from the gross estate the value of land sub-
 16 ject to a qualified conservation easement, reduced by
 17 the amount of any deduction under section 2055(f)
 18 with respect to such land.

19 “(2) TREATMENT OF CERTAIN INDEBTED-
 20 NESS.—

21 “(A) IN GENERAL.—The exclusion pro-
 22 vided under paragraph (1) shall not apply to
 23 the extent that the land is debt-financed prop-
 24 erty.

1 “(B) DEFINITIONS.—For purposes of this
2 paragraph—

3 “(i) DEBT-FINANCED PROPERTY.—
4 The term ‘debt-financed property’ means
5 any property with respect to which there is
6 acquisition indebtedness (as defined in
7 clause (ii)) on the date of the decedent’s
8 death.

9 “(ii) ACQUISITION INDEBTEDNESS.—
10 The term ‘acquisition indebtedness’ means,
11 with respect to any property, the unpaid
12 amount of—

13 “(I) any indebtedness incurred by
14 the donor in acquiring such property,

15 “(II) any indebtedness incurred
16 before the acquisition of such property
17 if such indebtedness would not have
18 been incurred but for such acquisition,

19 “(III) any indebtedness incurred
20 after the acquisition of such property
21 if such indebtedness would not have
22 been incurred but for such acquisition
23 and the incurrence of such indebted-
24 ness was reasonably foreseeable at the
25 time of such acquisition, and

1 “(IV) any indebtedness which
2 constitutes an extension, renewal, or
3 refinancing of other indebtedness de-
4 scribed in this clause.

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

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

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

1 “(C) ADDITIONAL TAX.—Any failure to
 2 implement the agreement described in subpara-
 3 graph (B) not later than the earlier of—

4 “(i) the date which is 2 years after
 5 the date of the decedent’s death, or

6 “(ii) the date of the sale of such land
 7 subject to the qualified conservation ease-
 8 ment,

9 shall result in the imposition of an additional
 10 tax in the amount of the tax which would have
 11 been due on the retained development rights
 12 subject to such agreement. Such additional tax
 13 shall be due and payable on the last day of the
 14 6th month following such earlier date.

15 “(D) DEVELOPMENT RIGHT DEFINED.—
 16 For purposes of this paragraph, the term ‘de-
 17 velopment right’ means any right to use the
 18 land subject to the qualified conservation ease-
 19 ment in which such right is retained for any
 20 commercial purpose which is not subordinate to
 21 and directly supportive of the use of such land
 22 as a farm for farming purposes (within the
 23 meaning of section 2032A(e)(5)).

24 “(4) ELECTION.—The election under this sub-
 25 section shall be made on or before the due date (in-

cluding extensions) for filing the return of tax imposed by section 2001 and shall be made on such return.

“(5) CALCULATION OF ESTATE TAX DUE.—An 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 was owned by the decedent or a member of the decedent’s family at all times during the 3-year period ending on the date of the decedent’s death, and

“(ii) with respect to which a qualified conservation easement has been made by

1 an individual described in subparagraph
 2 (C) as of the date of the election described
 3 in paragraph (4).

4 “(B) QUALIFIED CONSERVATION EASE-
 5 MENT.—The term ‘qualified conservation ease-
 6 ment’ means a qualified conservation contribu-
 7 tion (as defined in section 170(h)(1)) of a quali-
 8 fied real property interest (as defined in section
 9 170(h)(2)(C)), except that clause (iv) of section
 10 170(h)(4)(A) shall not apply.

11 “(C) INDIVIDUAL DESCRIBED.—An indi-
 12 vidual is described in this subparagraph if such
 13 individual is—

14 “(i) the decedent,

15 “(ii) a member of the decedent’s fam-
 16 ily,

17 “(iii) the executor of the decedent’s
 18 estate, or

19 “(iv) the trustee of a trust the corpus
 20 of which includes the land to be subject to
 21 the qualified conservation easement.

22 “(D) MEMBER OF THE DECEDENT’S FAM-
 23 ILY.—The term ‘member of the decedent’s fam-
 24 ily’ means any member of the family (as defined
 25 in section 2032A(e)(2)) of the decedent.

1 “(7) TREATMENT OF EASEMENTS GRANTED
 2 AFTER DEATH.—In any case in which the qualified
 3 conservation easement is granted after the date of
 4 the decedent’s death and on or before the due date
 5 (including extensions) for filing the return of tax im-
 6 posed by section 2001, the deduction under section
 7 2055(f) with respect to such easement shall be al-
 8 lowed to the estate but only if no charitable deduc-
 9 tion is allowed under chapter 1 to any person with
 10 respect to the grant of such easement.

11 “(8) APPLICATION OF THIS SECTION TO INTER-
 12 ESTS IN PARTNERSHIPS, CORPORATIONS, AND
 13 TRUSTS.—This subsection shall apply to an interest
 14 in a partnership, corporation, or trust if at least 30
 15 percent of the entity is owned (directly or indirectly)
 16 by the decedent, as determined under the rules de-
 17 scribed in section 2057(e)(3).”

18 (b) EFFECTIVE DATE.—The amendments made by
 19 this section shall apply to estates of decedents dying after
 20 December 31, 1999.

21 **SEC. 102. INCREASE IN SPECIAL ESTATE TAX VALUATION;**

22 **SPECIAL RULES FOR FOREST LANDS.**

23 (a) INCREASE IN LIMIT.—

24 (1) IN GENERAL.—Paragraphs (2) and (3) of
 25 section 2032A(a) (relating to value based on use

1 under which property qualifies) are each amended by
 2 striking “\$750,000” each place it appears and in-
 3 serting “\$1,000,000”.

4 (2) INFLATION ADJUSTMENT.—Section
 5 2032A(a)(3) is amended—

6 (A) by striking “1998” and inserting
 7 “2000”, and

8 (B) by striking “calendar year 1997” and
 9 inserting “calendar year 1999”.

10 (b) FOREST LAND TREATED AS QUALIFIED REAL
 11 PROPERTY.—Section 2032A(b) (defining qualified real
 12 property) is amended by adding at the end the following
 13 new paragraph:

14 “(6) SPECIAL RULE FOR QUALIFIED WOOD-
 15 LANDS.—In the case of qualified woodland, para-
 16 graph (1) shall be applied without regard to sub-
 17 paragraph (A) or (C)(ii) thereof.”

18 (c) DEFINITIONS AND FAILURES TO USE FOR
 19 QUALIFIED USE.—Section 2032A(c) (relating to tax
 20 treatment of definitions and failures to use for qualified
 21 use) is amended by adding at the end the following new
 22 paragraph:

23 “(9) SPECIAL RULES FOR QUALIFIED WOOD-
 24 LAND.—In the case of qualified woodland—

“(A) this subsection shall be applied by substituting ‘25 years’ for ‘10 years’ in paragraph (1) and by substituting ‘25-year period’ for ‘10-year period’ in paragraph (7)(A)(ii) and subsection (h)(2)(A),

“(B) the qualified heir shall not be treated as disposing of the property or ceasing to use the property for a qualified use if—

“(i) the qualified heir transfers the property to another person, and

“(ii) such other person (or their qualified heir) agrees to continue to use the property for a qualified use and files an agreement described in subsection (d)(2) with respect to the property,

“(C) the qualified heir shall be treated as ceasing to use the property for a qualified use if any depreciable improvements are made to the property (other than improvements required for the qualified use), and

“(D) a qualified heir or transferee described in subparagraph (B) shall not be treated as disposing of timber if the disposal is done in accordance with any program described in subsection (e)(13)(E).”

1 (d) QUALIFIED WOODLAND.—Section 2032A(e)(13)
 2 is amended by adding at the end the following new sub-
 3 paragraph:

4 “(E) OTHER REQUIREMENTS.—Real prop-
 5 erty shall not be treated as qualified woodland
 6 unless such property—

7 “(i) qualifies for a differential use
 8 value assessment program for forest land
 9 in the State in which the property is lo-
 10 cated, or

11 “(ii) if a State has no differential use
 12 value assessment program—

13 “(I) is forest land,

14 “(II) is a minimum of 10 acres,
 15 exclusive of a dwelling unit or other
 16 non-forest related structure and its
 17 curtilage, and

18 “(III) is subject to a forest man-
 19 agement plan.”

20 (e) VALUATION.—

21 (1) IN GENERAL.—Section 2032A(e) is amend-
 22 ed by adding at the end the following new para-
 23 graph:

24 “(15) SPECIAL RULES FOR VALUING FOREST
 25 LAND.—The value of forest land shall be determined

1 according to whichever of the following methods re-
2 sults in the least value:

3 “(A) Assessed land values in a State which
4 provides a differential or use value assessment
5 for forest land.

6 “(B) Comparable sales of other forest land
7 which is in the same geographical area and
8 which is far enough removed from a metropoli-
9 tan or resort area so that nonforest use is not
10 a significant factor in the sales price.

11 “(C) The capitalization of income which
12 the property can be expected to yield for timber
13 operations over a reasonable period of time
14 under prudent management, determined by
15 using traditional forest management for the
16 area, and taking into account soil capacity, ter-
17 rain configuration, and similar factors.

18 “(D) Any other factor which fairly values
19 the timber value of the property.”

20 (2) CONFORMING AMENDMENT.—Section
21 2032A(e)(8) is amended by striking “paragraph
22 (7)(A)” and inserting “paragraph (7)(A) or (15)”.

23 (f) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to estates of decedents dying after
25 December 31, 1999.

TITLE II—INCOME TAX TREATMENT

SEC. 201. PARTIAL INFLATION ADJUSTMENT FOR TIMBER.

(a) IN GENERAL.—Part I of subchapter P of chapter 1 (relating to treatment of capital gains) is amended by adding at the end the following new section:

“SEC. 1203. PARTIAL INFLATION ADJUSTMENT FOR TIMBER.

“(a) IN GENERAL.—At the election of any taxpayer who has qualified timber gain for any taxable year, there shall be allowed as a deduction from gross income an amount equal to the applicable percentage of such gain.

“(b) QUALIFIED TIMBER GAIN.—For purposes of this section, the term ‘qualified timber gain’ means the lesser of—

“(1) the net capital gain for the taxable year,
or

“(2) the net capital gain for the taxable year determined by taking into account only gains and losses from the sale or exchange of—

“(A) any standing timber (or the right to sever any standing timber), or

“(B) any qualified woodland (as defined in section 2032A(e)(13)(B)) or any interest therein.

1 Such term shall not include any gain excludable from
 2 gross income under section 139.

3 “(c) APPLICABLE PERCENTAGE.—For purposes of
 4 this section, the term ‘applicable percentage’ means the
 5 percentage (not exceeding 50 percent) determined by
 6 multiplying—

7 “(1) 3 percent, by

8 “(2) the number of years in the holding period
 9 of the taxpayer with respect to the timber.

10 “(d) ESTATES AND TRUSTS.—In the case of an es-
 11 tate or trust, the deduction under subsection (a) shall be
 12 computed by excluding the portion (if any) of the gains
 13 for the taxable year from sales or exchanges of capital as-
 14 sets which, under sections 652 and 662 (relating to inclu-
 15 sions of amounts in gross income of beneficiaries of
 16 trusts), is includible by the income beneficiaries as gain
 17 derived from the sale or exchange of capital assets.”

18 (b) COORDINATION WITH EXISTING LIMITATIONS.—

19 (1) Subsection (h) of section 1 (relating to max-
 20 imum capital gains rate) is amended by adding at
 21 the end the following new paragraph:

22 “(14) QUALIFIED TIMBER GAIN.—For purposes
 23 of this subsection, net capital gain shall be deter-
 24 mined without regard to qualified timber gain with

1 respect to which an election is made under section
2 1203.”

3 (2) Subsection (a) of section 1201 (relating to
4 alternative tax for corporations) is amended by add-
5 ing at the end the following flush sentence:

6 “For purposes of this section, net capital gain shall be
7 determined without regard to qualified timber gain with
8 respect to which an election is made under section 1203.”

9 (c) ALLOWANCE OF DEDUCTION IN COMPUTING AD-
10 JUSTED GROSS INCOME.—Subsection (a) of section 62
11 (relating to definition of adjusted gross income) is amend-
12 ed by inserting after paragraph (17) the following new
13 paragraph:

14 “(18) PARTIAL INFLATION ADJUSTMENT FOR
15 TIMBER.—The deduction allowed by section 1203.”

16 (d) CLERICAL AMENDMENT.—The table of sections
17 for part I of subchapter P of chapter 1 is amended by
18 adding at the end the following new item:

“Sec. 1203. Partial inflation adjustment for timber.”

19 (e) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to sales or exchanges after Decem-
21 ber 31, 1999.

1 **SEC. 202. EXCLUSION OF GAIN FROM SALES OF INTERESTS**
 2 **IN FOREST LAND FOR CONSERVATION PUR-**
 3 **POSES.**

4 (a) IN GENERAL.—Part III of subchapter B of chap-
 5 ter 1 (relating to items specifically excluded from gross
 6 income) is amended by redesignating section 139 as sec-
 7 tion 140 and by inserting after section 138 the following
 8 new section:

9 **“SEC. 139. SALES OF INTERESTS IN CERTAIN FOREST LAND**
 10 **FOR CONSERVATION PURPOSES.**

11 “(a) EXCLUSION.—

12 “(1) IN GENERAL.—Gross income shall not in-
 13 clude the applicable percentage of any gain from a
 14 qualified timber sale.

15 “(2) APPLICABLE PERCENTAGE.—For purposes
 16 of paragraph (1), the term ‘applicable percentage’
 17 means—

18 “(A) 35 percent, or

19 “(B) in the case of a qualified timber sale
 20 of a qualified real property interest described in
 21 section 170(h)(2)(C), 100 percent.

22 “(b) LIMITATION.—

23 “(1) IN GENERAL.—The total amount of gain
 24 which may be excluded from gross income under
 25 subsection (a) for any taxable year shall not exceed
 26 the sum of—

1 “(A) the amount of gain from a qualified
2 timber sale described in subsection (a)(2)(B),
3 plus

4 “(B) \$800,000 (\$400,000 in the case of a
5 married individual filing a separate return).

6 “(2) AGGREGATION RULE.—For purposes of
7 paragraph (1)(B), all persons treated as a single em-
8 ployer under subsection (a) or (b) of section 52 shall
9 be treated as one taxpayer.

10 “(c) QUALIFIED TIMBER SALE.—For purposes of
11 this section—

12 “(1) IN GENERAL.—The term ‘qualified timber
13 sale’ means the sale or exchange of a qualified real
14 property interest in real property which is used in
15 timber operations to a governmental unit described
16 in section 170(c)(1) for conservation purposes.

17 “(2) SPECIAL RULE FOR SALES TO NON-
18 GOVERNMENTAL ENTITIES.—

19 “(A) IN GENERAL.—The term ‘qualified
20 timber sale’ shall include a sale or exchange to
21 a qualified organization described in section
22 170(h)(3) if such interest is transferred to a
23 governmental unit described in section
24 170(c)(1) during the 2-year period beginning on
25 the date of the sale or exchange.

1 “(B) TIME FOR EXCLUSION.—If the trans-
 2 fer to which paragraph (1) applies occurs in a
 3 taxable year after the taxable year in which the
 4 sale or exchange occurred—

5 “(i) no exclusion shall be allowed
 6 under subsection (a) for the taxable year
 7 of the sale or exchange, but

8 “(ii) the taxpayer’s tax for the taxable
 9 year of the transfer shall be reduced by the
 10 amount of the reduction in the taxpayer’s
 11 tax for the taxable year of the sale or ex-
 12 change which would have occurred if sub-
 13 paragraph (A) had not applied.

14 “(d) OTHER DEFINITIONS.—For purposes of this
 15 section—

16 “(1) QUALIFIED REAL PROPERTY INTEREST.—
 17 The term ‘qualified real property interest’ has the
 18 meaning given such term by section 170(h)(2).

19 “(2) TIMBER OPERATIONS.—The term ‘timber
 20 operations’ has the meaning given such term by sec-
 21 tion 2032A(e)(13)(C).

22 “(3) CONSERVATION PURPOSES.—The term
 23 ‘conservation purposes’ has the meaning given such
 24 term by section 170(h)(4)(A) (without regard to
 25 clause (iv) thereof).”

1 (b) CLERICAL AMENDMENT.—The table of sections
 2 for part III of subchapter B of chapter 1 is amended by
 3 striking the item relating to section 139 and inserting the
 4 following new items:

“Sec. 139. Sales of interests in certain forest land for conserva-
 tion purposes.

“Sec. 140. Cross references to other Acts.”

5 (c) EFFECTIVE DATE.—The amendments made by
 6 this section shall apply to taxable years beginning after
 7 December 31, 1999.

8 **SEC. 203. APPLICATION OF PASSIVE LOSS LIMITATIONS TO**
 9 **TIMBER ACTIVITIES.**

10 (a) IN GENERAL.—Treasury regulations sections
 11 1.469–5T(b)(2) (ii) and (iii) shall not apply to any closely
 12 held timber activity if the nature of such activity is such
 13 that the aggregate hours devoted to management of the
 14 activity for any year is generally less than 100 hours.

15 (b) DEFINITIONS.—For purposes of subsection (a)—

16 (1) CLOSELY HELD ACTIVITY.—An activity
 17 shall be treated as closely held if at least 80 percent
 18 of the ownership interests in the activity is held—

19 (A) by 5 or fewer individuals, or

20 (B) by individuals who are members of the
 21 same family (within the meaning of section
 22 2032A(e)(2) of the Internal Revenue Code of
 23 1986).

1 An interest in a limited partnership shall in no event
2 be treated as a closely held activity for purposes of
3 this section.

4 (2) TIMBER ACTIVITY.—The term “timber ac-
5 tivity” means the planting, cultivating, caring, cut-
6 ting, or preparation (other than milling) for market,
7 of trees.

8 (c) EFFECTIVE DATE.—This section shall apply to
9 taxable years beginning after December 31, 1999.

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