

108TH CONGRESS
1ST SESSION

S. 34

To amend the Internal Revenue Code of 1986 to provide for the immediate and permanent repeal of the estate tax on family-owned businesses and farms, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 7, 2003

Mrs. LINCOLN 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 for the immediate and permanent repeal of the estate tax on family-owned businesses and farms, 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 “Estate Tax Repeal Ac-
5 celeration (ExTRA) for Family-Owned Businesses and
6 Farms Act”.

1 **SEC. 2. REPEAL OF ESTATE TAX ON FAMILY-OWNED BUSI-**
 2 **NESSES AND FARMS.**

3 (a) REPEAL OF QUALIFIED FAMILY-OWNED BUSI-
 4 NESS INTEREST.—Part IV of subchapter A of chapter 11
 5 of the Internal Revenue Code of 1986 (relating to taxable
 6 estate) is amended by striking section 2057.

7 (b) CARRYOVER BUSINESS INTEREST EXCLUSION.—
 8 Part IV of subchapter A of chapter 11 of the Internal
 9 Revenue Code of 1986 (relating to taxable estate) is
 10 amended by inserting after section 2058 the following new
 11 section:

12 **“SEC. 2059. CARRYOVER BUSINESS INTERESTS.**

13 **“(a) GENERAL RULES.—**

14 **“(1) ALLOWANCE OF DEDUCTION.—**For pur-
 15 poses of the tax imposed by section 2001, in the
 16 case of an estate of a decedent to which this section
 17 applies, the value of the taxable estate shall be de-
 18 termined by deducting from the value of the gross
 19 estate the adjusted value of the carryover business
 20 interests of the decedent which are described in sub-
 21 section (b)(2).

22 **“(2) APPLICATION OF CARRYOVER BASIS**
 23 **RULES.—**With respect to the adjusted value of the
 24 carryover business interests of the decedent which
 25 are described in subsection (b)(2), the rules of sec-
 26 tion 1023 shall apply.

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

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

4 “(A) the decedent was (at the date of the
5 decedent’s death) a citizen or resident of the
6 United States,

7 “(B) the executor elects the application of
8 this section under rules similar to the rules of
9 paragraphs (1) and (3) of section 2032A(d) and
10 files the agreement referred to in subsection (e),
11 and

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

16 “(i) the carryover business interests
17 described in paragraph (2) were owned by
18 the decedent or a member of the dece-
19 dent’s family, and

20 “(ii) there was material participation
21 (within the meaning of section
22 2032A(e)(6)) by the decedent, a member
23 of the decedent’s family, or a qualified heir
24 in the operation of the business to which
25 such interests relate.

1 “(2) INCLUDIBLE CARRYOVER BUSINESS INTER-
 2 ESTS.—The carryover business interests described in
 3 this paragraph are the interests which—

4 “(A) are included in determining the value
 5 of the gross estate (other than qualified spousal
 6 property with respect to which an aggregate
 7 spousal property basis increase is allocated
 8 under section 1023(c)),

9 “(B) are acquired by any qualified heir
 10 from, or passed to any qualified heir from, the
 11 decedent (within the meaning of section
 12 2032A(e)(9)), and

13 “(C) are subject to the election under
 14 paragraph (1)(B).

15 “(3) RULES REGARDING MATERIAL PARTICIPA-
 16 TION.—For purposes of paragraph (1)(C)(ii)—

17 “(A) in the case a surviving spouse, mate-
 18 rial participation by such spouse may be satis-
 19 fied under rules similar to the rules under sec-
 20 tion 2032A(b)(5),

21 “(B) in the case of a carryover business in-
 22 terest in an entity carrying on multiple trades
 23 or businesses, material participation in each
 24 trade or business is satisfied by material par-

1 ticipation in the entity or in 1 or more of the
2 multiple trades or businesses, and

3 “(C) in the case of a lending and finance
4 business (as defined in section
5 6166(b)(10)(B)(ii)), material participation is
6 satisfied under the rules under subclause (I) or
7 (II) of section 6166(b)(10)(B)(i).

8 “(c) ADJUSTED VALUE OF THE CARRYOVER BUSI-
9 NESS INTERESTS.—For purposes of this section—

10 “(1) IN GENERAL.—The adjusted value of any
11 carryover business interest is the value of such inter-
12 est for purposes of this chapter (determined without
13 regard to this section), as adjusted under paragraph
14 (2).

15 “(2) ADJUSTMENT FOR PREVIOUS TRANS-
16 FERS.—The Secretary may increase the value of any
17 carryover business interest by that portion of those
18 assets transferred from such carryover business in-
19 terest to the decedent’s taxable estate within 3 years
20 before the date of the decedent’s death.

21 “(d) CARRYOVER BUSINESS INTEREST.—

22 “(1) IN GENERAL.—For purposes of this sec-
23 tion, the term ‘carryover business interest’ means—

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

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

3 “(i) at least—

4 “(I) 50 percent of such entity is
5 owned (directly or indirectly) by the
6 decedent and members of the decedent’s family,

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

10 “(III) 90 percent of such entity
11 is so owned by members of 3 families,
12 and

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

17 For purposes of the preceding sentence, a decedent
18 shall be treated as engaged in a trade or business
19 if any member of the decedent’s family is engaged
20 in such trade or business.

21 “(2) LENDING AND FINANCE BUSINESS.—For
22 purposes of this section, any asset used in a lending
23 and finance business (as defined in section
24 6166(b)(10)(B)(ii)) shall be treated as an asset
25 which is used in carrying on a trade or business.

1 “(3) LIMITATION.—Such term shall not in-
2 clude—

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

6 “(B) any interest in an entity, if the stock
7 or debt of such entity or a controlled group (as
8 defined in section 267(f)(1)) of which such enti-
9 ty was a member was readily tradable on an es-
10 tablished securities market or secondary market
11 (as defined by the Secretary) at any time,

12 “(C) that portion of an interest in an enti-
13 ty transferred by gift to such interest within 3
14 years before the date of the decedent’s death,
15 and

16 “(D) that portion of an interest in an enti-
17 ty which is attributable to cash or marketable
18 securities, or both, in any amount in excess of
19 the reasonably anticipated business needs of
20 such entity.

21 In any proceeding before the United States Tax
22 Court involving a notice of deficiency based in whole
23 or in part on the allegation that cash or marketable
24 securities, or both, are accumulated in an amount in
25 excess of the reasonably anticipated business needs

1 of such entity, the burden of proof with respect to
 2 such allegation shall be on the Secretary to the ex-
 3 tent such cash or marketable securities are less than
 4 35 percent of the value of the interest in such entity.

5 “(4) RULES REGARDING OWNERSHIP.—

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

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

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

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

1 “(i) such ownership interest in the
 2 other trade or business shall be dis-
 3 regarded in determining if the ownership
 4 interest in the first trade or business is a
 5 carryover business interest, and

6 “(ii) this section shall be applied sepa-
 7 rately in determining if such interest in
 8 any other trade or business is a carryover
 9 business interest.

10 “(C) INDIVIDUAL OWNERSHIP RULES.—

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

19 “(e) AGREEMENT.—The agreement referred to in
 20 this subsection is a written agreement signed by each per-
 21 son in being who has an interest (whether or not in posses-
 22 sion) in any property designated in such agreement con-
 23 senting to the application of this section with respect to
 24 such property.

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

3 “(1) QUALIFIED HEIR.—The term ‘qualified
4 heir’ means a United States citizen who is—

5 “(A) described in section 2032A(e)(1), or

6 “(B) an active employee of the trade or
7 business to which the carryover business inter-
8 est relates if such employee has been employed
9 by such trade or business for a period of at
10 least 10 years before the date of the decedent’s
11 death.

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

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

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

19 “(B) Section 2032A(e)(10) (relating to
20 community property).

21 “(C) Section 2032A(e)(14) (relating to
22 treatment of replacement property acquired in
23 section 1031 or 1033 transactions).

1 “(D) Section 2032A(g) (relating to appli-
 2 cation to interests in partnerships, corporations,
 3 and trusts).

4 “(4) SAFE HARBOR FOR ACTIVE ENTITIES
 5 HELD BY ENTITY CARRYING ON A TRADE OR BUSI-
 6 NESS.—For purposes of this section, if—

7 “(A) an entity carrying on a trade or busi-
 8 ness owns 20 percent or more in value of the
 9 voting interests of another entity, or such other
 10 entity has 15 or fewer owners, and

11 “(B) 80 percent or more of the value of
 12 the assets of each such entity is attributable to
 13 assets used in an active business operation,
 14 then the requirements under subsections
 15 (b)(1)(C)(ii) and (d)(3)(D) shall be met with respect
 16 to an interest in such an entity.”.

17 (c) MODIFICATION OF TREATMENT OF MARITAL DE-
 18 DUCTION; LIMITATION ON STEP-UP IN BASIS.—Section
 19 2056 of the Internal Revenue Code of 1986 (relating to
 20 bequests, etc., to surviving spouses) is amended by adding
 21 at the end the following new subsection:

22 “(e) APPLICATION OF CARRYOVER BASIS RULES.—
 23 With respect to the value of the interests of the decedent
 24 which are described in subsection (a), the rules of section
 25 1023 shall apply.”.

1 (d) CARRYOVER BASIS RULES FOR CARRYOVER
 2 BUSINESS INTERESTS AND SPOUSAL PROPERTY.—Part II
 3 of subchapter O of chapter 1 of the Internal Revenue Code
 4 of 1986 (relating to basis rules of general application) is
 5 amended by inserting after section 1022 the following new
 6 section:

7 **“SEC. 1023. TREATMENT OF CARRYOVER BUSINESS INTER-**
 8 **ESTS AND SPOUSAL PROPERTY.**

9 “(a) IN GENERAL.—Except as otherwise provided in
 10 this section—

11 “(1) qualified property acquired from a dece-
 12 dent shall be treated for purposes of this subtitle as
 13 transferred by gift, and

14 “(2) the basis of the person acquiring qualified
 15 property from such a decedent shall be the lesser
 16 of—

17 “(A) the adjusted basis of the decedent, or

18 “(B) the fair market value of the property
 19 at the date of the decedent’s death.

20 “(b) QUALIFIED PROPERTY.—For purposes of this
 21 section, the term ‘qualified property’ means—

22 “(1) the carryover business interests of the de-
 23 cedent with respect to which an election is made
 24 under section 2059(b)(1)(B), and

25 “(2) the qualified spousal property.

1 “(c) ADDITIONAL BASIS INCREASE FOR PROPERTY
2 ACQUIRED BY SURVIVING SPOUSE.—

3 “(1) IN GENERAL.—In the case of property to
4 which this subsection applies and which is qualified
5 spousal property, the basis of such property under
6 subsection (a) shall be increased by its spousal prop-
7 erty basis increase.

8 “(2) SPOUSAL PROPERTY BASIS INCREASE.—
9 For purposes of this subsection—

10 “(A) IN GENERAL.—The spousal property
11 basis increase for property referred to in para-
12 graph (1) is the portion of the aggregate spous-
13 al property basis increase which is allocated to
14 the property pursuant to this section.

15 “(B) AGGREGATE SPOUSAL PROPERTY
16 BASIS INCREASE.—In the case of any estate,
17 the aggregate spousal property basis increase is
18 \$3,000,000.

19 “(3) QUALIFIED SPOUSAL PROPERTY.—For
20 purposes of this section, the term ‘qualified spousal
21 property’ means any interest in property which
22 passes or has passed from the decedent to the dece-
23 dent’s surviving spouse with respect to which a de-
24 duction is allowed under section 2056.

25 “(4) DEFINITIONS AND SPECIAL RULES.—

1 “(A) PROPERTY TO WHICH SUBSECTION
2 APPLIES.—The basis of property acquired from
3 a decedent may be increased under this sub-
4 section only if the property was owned by the
5 decedent at the time of death.

6 “(B) RULES RELATING TO OWNERSHIP.—

7 “(i) JOINTLY HELD PROPERTY.—In
8 the case of property which was owned by
9 the decedent and another person as joint
10 tenants with right of survivorship or ten-
11 ants by the entirety—

12 “(I) if the only such other person
13 is the surviving spouse, the decedent
14 shall be treated as the owner of only
15 50 percent of the property,

16 “(II) in any case (to which sub-
17 clause (I) does not apply) in which the
18 decedent furnished consideration for
19 the acquisition of the property, the de-
20 cedent shall be treated as the owner
21 to the extent of the portion of the
22 property which is proportionate to
23 such consideration, and

24 “(III) in any case (to which sub-
25 clause (I) does not apply) in which the

1 property has been acquired by gift,
 2 bequest, devise, or inheritance by the
 3 decedent and any other person as
 4 joint tenants with right of survivor-
 5 ship and their interests are not other-
 6 wise specified or fixed by law, the de-
 7 cedent shall be treated as the owner
 8 to the extent of the value of a frac-
 9 tional part to be determined by divid-
 10 ing the value of the property by the
 11 number of joint tenants with right of
 12 survivorship.

13 “(ii) REVOCABLE TRUSTS.—The dece-
 14 dent shall be treated as owning property
 15 transferred by the decedent during life to
 16 a qualified revocable trust (as defined in
 17 section 645(b)(1)).

18 “(iii) POWERS OF APPOINTMENT.—
 19 The decedent shall not be treated as own-
 20 ing any property by reason of holding a
 21 power of appointment with respect to such
 22 property.

23 “(iv) COMMUNITY PROPERTY.—Prop-
 24 erty which represents the surviving
 25 spouse’s one-half share of community prop-

erty held by the decedent and the surviving spouse under the community property laws of any State or possession of the United States or any foreign country shall be treated for purposes of this section as owned by, and acquired from, the decedent if at least one-half of the whole of the community interest in such property is treated as owned by, and acquired from, the decedent without regard to this clause.

“(C) PROPERTY ACQUIRED BY DECEDENT
BY GIFT WITHIN 3 YEARS OF DEATH.—

“(i) IN GENERAL.—This subsection shall not apply to property acquired by the decedent by gift or by inter vivos transfer for less than adequate and full consideration in money or money’s worth during the 3-year period ending on the date of the decedent’s death.

“(ii) EXCEPTION FOR CERTAIN GIFTS FROM SPOUSE.—Clause (i) shall not apply to property acquired by the decedent from the decedent’s spouse unless, during such 3-year period, such spouse acquired the property in whole or in part by gift or by

1 inter vivos transfer for less than adequate
 2 and full consideration in money or money's
 3 worth.

4 “(D) STOCK OF CERTAIN ENTITIES.—This
 5 subsection shall not apply to—

6 “(i) stock or securities of a foreign
 7 personal holding company,

8 “(ii) stock of a DISC or former
 9 DISC,

10 “(iii) stock of a foreign investment
 11 company, or

12 “(iv) stock of a passive foreign invest-
 13 ment company unless such company is a
 14 qualified electing fund (as defined in sec-
 15 tion 1295) with respect to the decedent.

16 “(E) FAIR MARKET VALUE LIMITATION.—
 17 The adjustments under this subsection shall not
 18 increase the basis of any interest in property
 19 acquired from the decedent above its fair mar-
 20 ket value in the hands of the decedent as of the
 21 date of the decedent's death.

22 “(d) PROPERTY ACQUIRED FROM THE DECEDENT.—
 23 For purposes of this section, the following property shall
 24 be considered to have been acquired from the decedent:

1 “(1) Property acquired by bequest, devise, or
2 inheritance, or by the decedent’s estate from the de-
3 cedent.

4 “(2) Property transferred by the decedent dur-
5 ing his lifetime—

6 “(A) to a qualified revocable trust (as de-
7 fined in section 645(b)(1)), or

8 “(B) to any other trust with respect to
9 which the decedent reserved the right to make
10 any change in the enjoyment thereof through
11 the exercise of a power to alter, amend, or ter-
12 minate the trust.

13 “(3) Any other property passing from the dece-
14 dent by reason of death to the extent that such
15 property passed without consideration.

16 “(e) COORDINATION WITH SECTION 691.—This sec-
17 tion shall not apply to property which constitutes a right
18 to receive an item of income in respect of a decedent under
19 section 691.

20 “(f) CERTAIN LIABILITIES DISREGARDED.—

21 “(1) IN GENERAL.—In determining whether
22 gain is recognized on the acquisition of property—

23 “(A) from a decedent by a decedent’s es-
24 tate or any beneficiary other than a tax-exempt
25 beneficiary, and

1 “(B) from the decedent’s estate by any
 2 beneficiary other than a tax-exempt beneficiary,
 3 and in determining the adjusted basis of such prop-
 4 erty, liabilities in excess of basis shall be dis-
 5 regarded.

6 “(2) TAX-EXEMPT BENEFICIARY.—For pur-
 7 poses of paragraph (1), the term ‘tax-exempt bene-
 8 ficiary’ means—

9 “(A) the United States, any State or polit-
 10 ical subdivision thereof, any possession of the
 11 United States, any Indian tribal government
 12 (within the meaning of section 7871), or any
 13 agency or instrumentality of any of the fore-
 14 going,

15 “(B) an organization (other than a cooper-
 16 ative described in section 521) which is exempt
 17 from tax imposed by chapter 1,

18 “(C) any foreign person or entity (within
 19 the meaning of section 168(h)(2)), and

20 “(D) to the extent provided in regulations,
 21 any person to whom property is transferred for
 22 the principal purpose of tax avoidance.

23 “(g) REGULATIONS.—The Secretary shall prescribe
 24 such regulations as may be necessary to carry out the pur-
 25 poses of this section.”.

1 (e) CLERICAL AMENDMENTS.—

2 (1) The table of sections for part IV of sub-
 3 chapter A of chapter 11 of the Internal Revenue
 4 Code of 1986 is amended by striking the item relat-
 5 ing to section 2057 and by inserting after the item
 6 relating to section 2058 the following new item:

“Sec. 2059. Carryover business exclusion.”.

7 (2) The table of sections for part II of sub-
 8 chapter O of chapter 1 of such Code is amended by
 9 inserting after the item relating to section 1022 the
 10 following new item:

“Sec. 1023. Treatment of carryover business interests and spousal
 property.”.

11 (f) EFFECTIVE DATES.—The amendments made by
 12 this section shall apply to estates of decedents dying, and
 13 gifts made—

14 (1) after December 31, 2003, and before Janu-
 15 ary 1, 2010, and

16 (2) after December 31, 2011.

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