

111TH CONGRESS
1ST SESSION

S. 2728

To amend the Internal Revenue Code of 1986 to provide that the value of certain historic property shall be determined using an income approach in determining the taxable estate of a decedent.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 4, 2009

Mr. BURR (for himself, Mrs. HAGAN, and Mr. WICKER) 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 that the value of certain historic property shall be determined using an income approach in determining the taxable estate of a decedent.

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. ESTATE TAX VALUATION OF CERTAIN HIS-**
4 **TORIC PROPERTY.**

5 (a) IN GENERAL.—Part III of subchapter A of chap-
6 ter 11 of the Internal Revenue Code of 1986 (relating to
7 gross estate) is amended by inserting after section 2032A
8 the following new section:

1 **“SEC. 2032B. VALUATION OF CERTAIN HISTORIC PROP-**
 2 **ERTY.**

3 “(a) VALUE BASED ON NET EARNINGS OF HISTORIC
 4 PROPERTY.—If—

5 “(1) the decedent was (at the time of his death)
 6 a citizen or resident of the United States, and

7 “(2) the executor executes an agreement which
 8 meets the requirements of subsection (c),

9 then, for the purposes of this chapter, the value of quali-
 10 fied historic property shall be based on the net earnings
 11 (as defined in subsection (b)(3)) derived from such prop-
 12 erty.

13 “(b) DEFINITIONS AND SPECIAL RULES.—For pur-
 14 poses of this section—

15 “(1) QUALIFIED HISTORIC PROPERTY.—The
 16 term ‘qualified historic property’ means—

17 “(A) any building (and its structural com-
 18 ponents)—

19 “(i) which is designated as a National
 20 Historic Landmark under section 101 of
 21 the National Historic Preservation Act at
 22 the time of the decedent’s death and for a
 23 continuous period of at least 25 years prior
 24 to the decedent’s death, and

25 “(ii) which was originally used for res-
 26 idential or farming purposes,

“(B) any other real property to the extent reasonably necessary for ingress, egress, public enjoyment, and visitation of the property described in subparagraph (A) (but not including any real property used primarily for the sale, production, or manufacturing of products or for lodging purposes), and

“(C) personal property included within, or associated with, property described in subparagraph (A) or (B) if such personal property—

“(i) is held by the decedent holding such building,

“(ii) has been so included within, or associated with, such property so described throughout the 25-year period ending on the date of the decedent’s death, and

“(iii) is covered by the agreement referred to in subsection (a)(2) which covers such building,

owned by the decedent throughout the 25-year period ending on the date of the decedent’s death.

“(2) TREATMENT OF HISTORIC PROPERTY HELD BY A CORPORATION.—In the case of a corporation all of the stock in which was held on the date of the decedent’s death by the decedent or

1 members of the decedent's family (as defined in sec-
2 tion 2032A(e)(2))—

3 “(A) stock in such corporation shall be
4 treated for purposes of this section as qualified
5 historic property to the extent that the value of
6 such stock is attributable to qualified historic
7 property held by such corporation, but

8 “(B) the requirements of subsection (c)
9 shall be met only if each member of the dece-
10 dent's family holding such stock on such date
11 signs the agreement referred to in subsection
12 (a)(2).

13 “(3) NET EARNINGS.—The term ‘net earnings’
14 means income derived from qualified historic prop-
15 erty (determined without regard to any interest, de-
16 preciation, or tax expense) times 7.

17 “(4) DETERMINATION OF TIME PERIODS.—In
18 determining the period for which the decedent has
19 held any property or stock, there shall be included
20 the period for which such property or stock was held
21 by members of the decedent's family (as defined in
22 section 2032A(e)(2)).

23 “(c) REQUIREMENTS FOR AGREEMENT.—

1 “(1) IN GENERAL.—For purposes of subsection
2 (a)(2), an agreement meets the requirements of this
3 subsection if—

4 “(A) such agreement is a written agree-
5 ment signed by each person in being who has
6 an interest (whether or not in possession) in the
7 building described in subsection (b)(1)(A),

8 “(B) such agreement provides that the
9 only activities carried on at such building are
10 activities which are substantially related (aside
11 from the need for income or funds or the use
12 made of the profits derived) to—

13 “(i) the public visitation of such build-
14 ing and the property described in sub-
15 section (b)(1)(B) with respect to such
16 property), and

17 “(ii) the maintenance and preserva-
18 tion of such building and property for such
19 public visitation, and

20 “(C) such agreement provides that such
21 building will be open to the public for a period
22 of at least 25 years beginning on the date on
23 which the return of the tax imposed by this
24 chapter is filed.

1 “(2) OPEN TO THE PUBLIC.—For the purposes
2 of paragraph (1)(C)—

3 “(A) a property shall be treated as being
4 open to the public for any year if—

5 “(i) a substantial portion of the prop-
6 erty is open for public visitation for at
7 least 8 hours per day and 6 days per week
8 during at least any 40 weeks of such year,

9 “(ii) the executor notifies the State
10 historic agency that the property is open
11 and available for public visitation,

12 “(iii) public access to the property is
13 achievable without undue and deliberate
14 difficulty or cost purposely intended to dis-
15 courage the visitation of the property,

16 “(iv) 1 or more of the signatories to
17 the agreement or professional or trained
18 volunteer staff representing such signato-
19 ries are available to facilitate the visitation
20 of the property through at least 2 methods
21 and practices common to the tourism in-
22 dustry, including telephone, website, mail-
23 ing address, or ticket booth, and

1 “(v) there is an ongoing effort to en-
 2 sure the general public is aware that the
 3 property is available for visitation, and

4 “(B) the 25-year period referred to in such
 5 paragraph shall be suspended during reasonable
 6 periods of renovation.

7 Communication under subparagraph (A)(v) shall not
 8 necessarily require expenditure of monies for adver-
 9 tising, but should include periodic contact with
 10 groups such as State and local historic agencies and
 11 tourism boards.

12 “(d) TAX TREATMENT OF DISPOSITIONS AND FAIL-
 13 URE TO COMPLY WITH AGREEMENT.—

14 “(1) IMPOSITION OF ADDITIONAL ESTATE
 15 TAX.—If, during the 25-year period referred to in
 16 subsection (c)(1)(C)—

17 “(A) any person signing the written agree-
 18 ment referred to in subsection (a)(2) disposes
 19 of any interest in the building subject to such
 20 agreement, or

21 “(B) there is a violation of any provision
 22 of such agreement (as determined under regula-
 23 tions prescribed by the Secretary),
 24 then there is hereby imposed an additional estate
 25 tax.

1 “(2) EXCEPTION FOR CERTAIN TRANSFEREES
 2 WHO AGREE TO BE BOUND BY AGREEMENT.—No tax
 3 shall be imposed under paragraph (1) by reason of
 4 any disposition if the person acquiring such inter-
 5 est—

6 “(A) is a qualified organization (as defined
 7 in section 170 (b)(1)(A)) or is a member of the
 8 family (as defined in section 2032A(e)(2)) of
 9 the person disposing of such interest, and

10 “(B) agrees to be bound by the agreement
 11 referred to in subsection (a)(2) and to be liable
 12 for any tax under this subsection in the same
 13 manner as the person disposing of such inter-
 14 est.

15 “(3) AMOUNT OF ADDITIONAL TAX.—The
 16 amount of the additional tax imposed by paragraph
 17 (1) with respect to any property shall be an amount
 18 equal to the excess of—

19 “(A) what would (but for subsection (a))
 20 have been the tax imposed by section 2001 (re-
 21 duced by the credits allowable), over

22 “(B) the tax imposed by section 2001 (as
 23 so reduced).

24 “(4) DUE DATE.—The additional tax imposed
 25 by this subsection shall be due and payable on the

1 day which is 9 months after the date of the disposi-
 2 tion or violation referred to in paragraph (1).

3 “(5) LIABILITY FOR TAX.—Any person signing
 4 the agreement referred to in subsection (a)(2) (other
 5 than the executor) shall be personally liable for the
 6 additional tax imposed by this subsection. If more
 7 than 1 person is liable under this subsection, all
 8 such persons shall be jointly and severally liable.

9 “(6) CERTAIN OTHER RULES TO APPLY.—Rules
 10 similar to the rules of sections 1016(c), 2013(f), and
 11 2032A(f) shall apply for purposes of this sub-
 12 section.”.

13 (b) COORDINATION WITH GIFT TAX.—Section 2512
 14 of the Internal Revenue Code of 1986 (relating to valu-
 15 ation of gifts) is amended by adding at the end the fol-
 16 lowing new subsection:

17 “(c) For the purposes of this chapter, the value of
 18 qualified historic property (as defined in section
 19 2032B(b)(1)) transferred for less than an adequate and
 20 full consideration shall be valued under section 2032B.”.

21 (c) TECHNICAL AMENDMENTS.—

22 (1) Subparagraph (A) of section 2056A(b)(10)
 23 of the Internal Revenue Code of 1986 is amended by
 24 inserting “2032B,” after “2032A,”.

1 (2) The table of sections for part III of sub-
2 chapter A of chapter 11 of such Code is amended by
3 inserting after the item relating to section 2032A
4 the following new item:

“Sec. 2032B. Valuation of certain historic property.”.

5 (d) EFFECTIVE DATE.—The amendments made by
6 this section shall apply with respect to the estates of dece-
7 dents dying after the date of the enactment of this Act.
8 Notwithstanding the preceding sentence, for the purposes
9 of section 901 of the Economic Growth and Tax Reconcili-
10 ation Act of 2001, the amendments made by this section
11 shall be treated as being enacted before the date of the
12 enactment of such Act.

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