

111TH CONGRESS  
2D SESSION

# S. 3664

To amend the Internal Revenue Code of 1986 to exempt certain farmland from the estate tax, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 28, 2010

Mrs. FEINSTEIN (for herself, Mr. CRAPO, Mr. UDALL of Colorado, Mr. BENNET, and Mrs. BOXER) 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 exempt certain farmland from the estate tax, 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 “Family Farm Estate  
5 Tax Deferral Act of 2010”.

6 **SEC. 2. EXCLUSION FROM GROSS ESTATE OF CERTAIN**  
7 **FARMLAND SO LONG AS FARMLAND USE**  
8 **CONTINUES.**

9 (a) IN GENERAL.—Part III of subchapter A of chap-  
10 ter 11 of the Internal Revenue Code of 1986 (relating to

1 gross estate) is amended by inserting after section 2033  
 2 the following new section:

3 **“SEC. 2033A. EXCLUSION OF CERTAIN FARMLAND SO LONG**  
 4 **AS USE AS FARMLAND CONTINUES.**

5 “(a) IN GENERAL.—In the case of an estate of a de-  
 6 cedent to which this section applies, the value of the gross  
 7 estate shall not include the adjusted value of qualified  
 8 farmland included in the estate.

9 “(b) ESTATES TO WHICH SECTION APPLIES.—This  
 10 section shall apply to an estate if—

11 “(1) the executor elects the application of this  
 12 section and files an agreement referred to in section  
 13 2032A(d)(2),

14 “(2) the decedent was (at the date of the dece-  
 15 dent’s death) a citizen or resident of the United  
 16 States,

17 “(3) the decedent for the 3-taxable-year period  
 18 (10-taxable-year period in the case of any qualified  
 19 farmland which is qualified woodland described in  
 20 section 2032A(c)(2)(F)(i)) preceding the date of the  
 21 decedent’s death had an average adjusted gross in-  
 22 come not exceeding the average adjusted gross in-  
 23 come limitation applicable under subparagraphs (A)  
 24 and (B) of section 1001D(b)(1) of the Food Security

1 Act of 1985 (7 U.S.C. 1308–3a(b)(1)) (as in effect  
2 on such date),

3 “(4) 50 percent or more of the adjusted value  
4 of the gross estate at the date of the decedent’s  
5 death consists of real or personal property which is  
6 used as a farm for farming purposes (within the  
7 meaning of section 2032A(e)),

8 “(5) 25 percent or more of the adjusted value  
9 of the gross estate consists of the adjusted value of  
10 qualified farmland which is real property, and

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

14 “(A) the qualified farmland which is such  
15 real property was owned by the decedent or a  
16 member of the decedent’s family, and

17 “(B) there was material participation  
18 (within the meaning of section 2032A(e)(6)) by  
19 the decedent or a member of the decedent’s  
20 family in the operation of such farmland.

21 Rules similar to the rules of paragraphs (4) and (5)  
22 of section 2032A(b) shall apply for purposes of sub-  
23 paragraph (B).

24 “(c) DEFINITIONS.—For purposes of this section—

1           “(1) QUALIFIED FARMLAND.—The term ‘quali-  
2       fied farmland’ means any real property which—

3                   “(A) is located in the United States,

4                   “(B) is used as a farm for farming pur-  
5       poses (within the meaning of section 2032A(e)),

6                   “(C) was acquired from or passed from the  
7       decedent to a qualified heir of the decedent and  
8       which, on the date of the decedent’s death, was  
9       being so used by the decedent or a member of  
10      the decedent’s family, and

11                  “(D) is property designated in the agree-  
12      ment filed under subsection (b)(1).

13           “(2) ADJUSTED VALUE.—The term ‘adjusted  
14      value’ means the value of farmland for purposes of  
15      this chapter (determined without regard to this sec-  
16      tion), reduced by any amounts allowable as a deduc-  
17      tion in respect to such farmland under paragraph  
18      (3) or (4) of section 2053(a).

19           “(3) OTHER TERMS.—Any other term used in  
20      this section which is also used in section 2032A shall  
21      have the same meaning given such term by section  
22      2032A.

23           “(d) TAX TREATMENT OF DISPOSITIONS AND FAIL-  
24      URES TO USE FOR FARMING PURPOSES.—

1           “(1) IMPOSITION OF RECAPTURE TAX.—If, at  
2           any time after the decedent’s death and before the  
3           death of the qualified heir—

4                   “(A) the qualified heir disposes of any in-  
5                   terest in qualified farmland (other than by a  
6                   disposition to a member of his family), or

7                   “(B) the qualified heir ceases to use the  
8                   real property which was acquired (or passed)  
9                   from the decedent as a farm for farming pur-  
10                  poses,

11          then, there is hereby imposed a recapture tax.

12           “(2) AMOUNT OF RECAPTURE TAX, ETC.—

13                   “(A) IN GENERAL.—Except as provided in  
14                   subparagraph (B), rules similar to the rules of  
15                   section 2032A(c) (other than paragraphs (1)  
16                   and (2)(E) thereof) with respect to the addi-  
17                   tional estate tax shall apply for purposes of this  
18                   subsection with respect to the recapture tax.

19                   “(B) ADJUSTMENT OF RECAPTURE TAX TO  
20                   REFLECT INCREASE IN VALUE OF FARM-  
21                   LAND.—The amount of the recapture tax other-  
22                   wise determined under rules described in sub-  
23                   paragraph (A) shall be increased by the per-  
24                   centage (if any) by which the value of the inter-  
25                   est in the qualified farmland at the time of the

1           imposition of such tax is greater than the ad-  
 2           justed value of such farmland included in the  
 3           estate.

4           “(e) APPLICATION OF OTHER RULES.—Rules similar  
 5 to the rules of subsections (d), (e) (other than paragraph  
 6 (13) thereof), (f), (g), (h), and (i) of section 2032A shall  
 7 apply for purposes of this section.”.

8           (b) APPLICATION OF LIEN.—Section 6324B of the  
 9 Internal Revenue Code of 1986 (relating to special lien  
 10 for additional estate tax attributable to farm, etc., valu-  
 11 ation) is amended by adding at the end the following new  
 12 subsection:

13           “(e) APPLICATION TO QUALIFIED FARMLAND.—

14           “(1) IN GENERAL.—In the case of any interest  
 15 in qualified farmland (within the meaning of section  
 16 2033A(c)(1)), this section shall apply in the same  
 17 manner as such section applies to qualified real  
 18 property.

19           “(2) FORM AND CONTENT.—In addition to any  
 20 form and content otherwise required by the Sec-  
 21 retary with respect to a notice of lien filed against  
 22 qualified farmland, such notice shall include a state-  
 23 ment that such lien is imposed solely for purposes of  
 24 the estate tax exclusion granted with respect to such  
 25 qualified farmland under section 2033A.”.

1       (c) WOODLANDS SUBJECT TO MANAGEMENT  
 2 PLAN.—Paragraph (2) of section 2032A(c) of the Internal  
 3 Revenue Code of 1986 is amended by adding at the end  
 4 the following new subparagraph:

5               “(F) EXCEPTION FOR WOODLANDS SUB-  
 6 JECT TO FOREST STEWARDSHIP PLAN.—

7               “(i) IN GENERAL.—Subparagraph (E)  
 8 shall not apply to any disposition or sever-  
 9 ance of standing timber on a qualified  
 10 woodland that is made pursuant to a forest  
 11 stewardship plan developed under the Co-  
 12 operative Forestry Assistance Act of 1978  
 13 (16 U.S.C. 2103a) or an equivalent plan  
 14 approved by the State Forester.

15              “(ii) COMPLIANCE WITH FOREST  
 16 STEWARDSHIP PLAN.—Clause (i) shall not  
 17 apply if, during the 10-year period under  
 18 paragraph (1), the qualified heir fails to  
 19 comply with such forest stewardship plan  
 20 or equivalent plan.”.

21       (d) CERTAIN CONSERVATION TRANSACTIONS NOT  
 22 TREATED AS DISPOSITIONS.—Paragraph (8) of section  
 23 2032A(c) of the Internal Revenue Code of 1986 is amend-  
 24 ed to read as follows:

1           “(8) CERTAIN CONSERVATION TRANSACTIONS  
2 NOT TREATED AS DISPOSITIONS.—

3           “(A) QUALIFIED CONSERVATION CON-  
4 TRIBUTIONS.—A qualified conservation con-  
5 tribution by gift or otherwise shall not be  
6 deemed a disposition under subsection  
7 (c)(1)(A).

8           “(B) QUALIFIED CONSERVATION EASE-  
9 MENT SOLD TO QUALIFIED ORGANIZATION.—A  
10 sale of a qualified conservation easement to a  
11 qualified organization shall not be deemed a  
12 disposition under subsection (c)(1)(A).

13           “(C) DEFINITIONS.—For purposes of this  
14 paragraph—

15           “(i) the terms ‘qualified conservation  
16 contribution’ and ‘qualified organization’  
17 have the meanings given such terms by  
18 section 170(h), and

19           “(ii) the term ‘qualified conservation  
20 easement’ has the meaning given such  
21 term by section 2031(c)(8).”.

22           (e) CLERICAL AMENDMENT.—The table of sections  
23 for part III of subchapter A of chapter 11 of the Internal  
24 Revenue Code of 1986 is amended by inserting after the  
25 item relating to section 2033 the following new item:



“Sec. 2033A. Exclusion of certain farmland so long as use as farmland continues.”.

1 (f) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to estates of decedents dying after  
3 the date of the enactment of this Act.

4 **SEC. 3. INCREASE IN LIMITATIONS ON THE AMOUNT EX-**  
5 **CLUDED FROM THE GROSS ESTATE WITH RE-**  
6 **SPECT TO LAND SUBJECT TO A QUALIFIED**  
7 **CONSERVATION EASEMENT.**

8 (a) INCREASE IN DOLLAR LIMITATION ON EXCLU-  
9 SION.—Paragraph (3) of section 2031(c) of the Internal  
10 Revenue Code of 1986 (relating to exclusion limitation)  
11 is amended by striking “the exclusion limitation is” and  
12 all that follows and inserting “the exclusion limitation is  
13 \$5,000,000.”.

14 (b) INCREASE IN PERCENTAGE OF VALUE OF LAND  
15 WHICH IS EXCLUDABLE.—Paragraph (2) of section  
16 2031(c) of the Internal Revenue Code of 1986 (relating  
17 to applicable percentage) is amended—

18 (1) by striking “40 percent” and inserting “50  
19 percent”, and

20 (2) by striking “2 percentage points” and in-  
21 serting “2.5 percentage points”.

1       (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to the estates of decedents dying  
3 after the date of the enactment of this Act.

