

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 1086

To amend the Internal Revenue Code of 1986 to allow a family-owned business exclusion from the gross estate subject to estate tax, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 28 (legislative day, JULY 10), 1995

Mr. DOLE (for himself, Mr. PRYOR, Mr. ROTH, Mr. BAUCUS, Mr. PRESSLER, Mr. BREAUX, Mr. BOND, Mr. SIMPSON, Mr. GRASSLEY, Mr. HATCH, Mr. D'AMATO, Mr. MURKOWSKI, Mr. NICKLES, Mr. HELMS, Mr. WARNER, Mr. GREGG, Mr. BENNETT, Mr. LUGAR, Ms. SNOWE, Mr. ABRAHAM, Mr. BURNS, Mr. LOTT, Mr. ASHCROFT, Mr. COATS, Mr. INHOFE, Mrs. HUTCHISON, Mr. STEVENS, Mrs. KASSEBAUM, Mr. KERREY, Mr. COHEN, Mr. CAMPBELL, and Mr. COVERDELL) 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 allow a family-owned business exclusion from the gross estate subject to 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 “American Family-  
5 Owned Business Act”.

1 **SEC. 2. FAMILY-OWNED BUSINESS EXCLUSION.**

2 (a) IN GENERAL.—Part III of subchapter A of chap-  
3 ter 11 of the Internal Revenue Code of 1986 (relating to  
4 gross estate) is amended by inserting after section 2033  
5 the following new section:

6 **“SEC. 2033A. FAMILY-OWNED BUSINESS EXCLUSION.**

7 “(a) IN GENERAL.—In the case of an estate of a de-  
8 cedent to which this section applies, the value of the gross  
9 estate shall not include the lesser of—

10 “(1) the adjusted value of the qualified family-  
11 owned business interests of the decedent otherwise  
12 includible in the estate, or

13 “(2) the sum of—

14 “(A) \$1,500,000, plus

15 “(B) 50 percent of the excess (if any) of  
16 the adjusted value of such interests over  
17 \$1,500,000.

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

20 “(1) the decedent was (at the date of the dece-  
21 dent’s death) a citizen or resident of the United  
22 States,

23 “(2) the excess of—

24 “(A) the sum of—

25 “(i) the adjusted value of the qualified  
26 family-owned business interests which—

1           “(I) are included in determining  
2           the value of the gross estate (without  
3           regard to this section), and

4           “(II) are acquired by a qualified  
5           heir from, or passed to a qualified  
6           heir from, the decedent (within the  
7           meaning of section 2032A(e)(9)), plus

8           “(ii) the amount of the adjusted tax-  
9           able gifts of such interests from the dece-  
10          dent to members of the decedent’s family  
11          taken into account under subsection  
12          2001(b)(1)(B), to the extent such interests  
13          are continuously held by such members be-  
14          tween the date of the gift and the date of  
15          the decedent’s death, over

16          “(B) the amount included in the gross es-  
17          tate under section 2035,

18          exceeds 50 percent of the adjusted gross estate, and

19          “(3) during the 8-year period ending on the  
20          date of the decedent’s death there have been periods  
21          aggregating 5 years or more during which—

22          “(A) such interests were owned by the de-  
23          cedent or a member of the decedent’s family,  
24          and

1           “(B) there was material participation  
2           (within the meaning of section 2032A(e)(6)) by  
3           the decedent or a member of the decedent’s  
4           family in the operation of the business to which  
5           such interests relate.

6           “(c) ADJUSTED GROSS ESTATE.—For purposes of  
7           this section, the term ‘adjusted gross estate’ means the  
8           value of the gross estate (determined without regard to  
9           this section)—

10           “(1) reduced by any amount deductible under  
11           section 2053(a)(4), and

12           “(2) increased by the excess of—

13           “(A) the sum of—

14           “(i) the amount taken into account  
15           under subsection (b)(2)(B)), plus

16           “(ii) the amount of other gifts from  
17           the decedent to the decedent’s spouse (at  
18           the time of the gift) within 10 years of the  
19           date of the decedent’s death, plus

20           “(iii) the amount of other gifts (not  
21           included under clause (i) or (ii)) from the  
22           decedent within 3 years of such date, over

23           “(B) the amount included in the gross es-  
24           tate under section 2035.

1       “(d) ADJUSTED VALUE OF THE QUALIFIED FAMILY-  
2 OWNED BUSINESS INTERESTS.—For purposes of this sec-  
3 tion, the adjusted value of any qualified family-owned  
4 business interest is the value of such interest for purposes  
5 of this chapter (determined without regard to this sec-  
6 tion), reduced by the excess of—

7               “(1) any amount deductible under section  
8       2053(a)(4), over

9               “(2) the sum of—

10                       “(A) any indebtedness on any qualified  
11                       residence of the decedent the interest on which  
12                       is deductible under section 163(h)(3), plus

13                       “(B) any indebtedness to the extent the  
14                       taxpayer establishes that the proceeds of such  
15                       indebtedness were used for the payment of edu-  
16                       cational and medical expenses of the decedent,  
17                       the decedent’s spouse, or the decedent’s depend-  
18                       ents (within the meaning of section 152), plus

19                       “(C) any indebtedness not described in  
20                       subparagraph (A) or (B), to the extent such in-  
21                       debtedness does not exceed \$10,000.

22       “(e) QUALIFIED FAMILY-OWNED BUSINESS INTER-  
23 EST.—

1           “(1) IN GENERAL.—For purposes of this sec-  
2           tion, the term ‘qualified family-owned business inter-  
3           est’ means—

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

6                   “(B) an interest as a partner in a partner-  
7                   ship, or stock in a corporation, carrying on a  
8                   trade or business, if—

9                           “(i) at least—

10                                   “(I) 50 percent of such partner-  
11                                   ship or corporation is owned (directly  
12                                   or indirectly) by the decedent or mem-  
13                                   bers of the decedent’s family,

14                                   “(II) 70 percent of such partner-  
15                                   ship or corporation is so owned by 2  
16                                   families (including the decedent’s fam-  
17                                   ily), or

18                                   “(III) 90 percent of such part-  
19                                   nership or corporation is so owned by  
20                                   3 families (including the decedent’s  
21                                   family), and

22                                   “(ii) at least 30 percent of such part-  
23                                   nership or corporation is so owned by each  
24                                   family described in subclause (II) or (III)  
25                                   of clause (i).

1           “(2) 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—

7           “(i) an entity which had, or

8           “(ii) an entity which is a member of  
9       a controlled group (as defined in section  
10      267(f)(1)) which had,

11      readily tradable stock or debt on an established  
12      securities market or secondary market (as de-  
13      fined by the Secretary) within 3 years of the  
14      date of the decedent’s death,

15      “(C) any interest in a trade or business  
16      not described in section 542(c)(2), if more than  
17      35 percent of the adjusted ordinary gross in-  
18      come of such trade or business for the taxable  
19      year which includes the date of the decedent’s  
20      death would qualify as personal holding com-  
21      pany income (as defined in section 543(a)), and

22      “(D) that portion of an interest in a trade  
23      or business that is attributable to cash or mar-  
24      ketable securities, or both, in excess of the rea-

1 sonably expected day-to-day working capital  
2 needs of such trade or business.

3 “(3) OWNERSHIP RULES.—

4 “(A) INDIRECT OWNERSHIP.—For pur-  
5 poses of determining indirect ownership under  
6 paragraph (1), rules similar to the rules of  
7 paragraphs (2) and (3) of section 447(e) shall  
8 apply.

9 “(B) TIERED ENTITIES.—For purposes of  
10 this section, if—

11 “(i) a qualified family-owned business  
12 holds an interest in another trade or busi-  
13 ness, and

14 “(ii) such interest would be a qualified  
15 family-owned business interest if held di-  
16 rectly by the family (or families) holding  
17 interests in the qualified family-owned  
18 business meeting the requirements of para-  
19 graph (1)(B),

20 then the value of the qualified family-owned  
21 business shall include the portion attributable  
22 to the interest in the other trade or business.

23 “(f) TAX TREATMENT OF FAILURE TO MATERIALLY  
24 PARTICIPATE IN BUSINESS OR DISPOSITIONS OF INTER-  
25 ESTS.—



1           “(1) IN GENERAL.—There is imposed an addi-  
2 tional estate tax if, within 10 years after the date  
3 of the decedent’s death and before the date of the  
4 qualified heir’s death—

5           “(A) the qualified heir ceases to use for  
6 the qualified use (within the meaning of section  
7 2032A(c)(6)(B)) the qualified family-owned  
8 business interest which was acquired (or  
9 passed) from the decedent, or

10           “(B) the qualified heir disposes of any por-  
11 tion of a qualified family-owned business inter-  
12 est (other than by a disposition to a member of  
13 the qualified heir’s family or through a qualified  
14 conservation contribution under section  
15 170(h)).

16           “(2) ADDITIONAL ESTATE TAX.—The amount  
17 of the additional estate tax imposed by paragraph  
18 (1) shall be equal to—

19           “(A) the adjusted tax difference attrib-  
20 utable to the qualified family-owned business  
21 interest (as determined under rules similar to  
22 the rules of section 2032A(c)(2)(B)), plus

23           “(B) interest on the amount determined  
24 under subparagraph (A) at the annual rate of  
25 4 percent for the period beginning on the date

1 the estate tax liability was due under this chap-  
2 ter and ending on the date such additional es-  
3 tate tax is due.

4 “(g) OTHER DEFINITIONS AND APPLICABLE  
5 RULES.—For purposes of this section—

6 “(1) QUALIFIED HEIR.—The term ‘qualified  
7 heir’—

8 “(A) has the meaning given to such term  
9 by section 2032A(e)(1), and

10 “(B) includes any active employee of the  
11 trade or business to which the qualified family-  
12 owned business interest relates if such employee  
13 has been employed by such trade or business  
14 for a period of at least 10 years before the date  
15 of the decedent’s death.

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

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

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

23 “(B) Section 2032A(b)(5) (relating to spe-  
24 cial rules for surviving spouses).

1           “(C) Section 2032A(c)(2)(D) (relating to  
2 partial dispositions).

3           “(D) Section 2032A(c)(3) (relating to only  
4 1 additional tax imposed with respect to any 1  
5 portion).

6           “(E) Section 2032A(c)(4) (relating to due  
7 date).

8           “(F) Section 2032A(c)(5) (relating to li-  
9 ability for tax; furnishing of bond).

10           “(G) Section 2032A(c)(7) (relating to no  
11 tax if use begins within 2 years; active manage-  
12 ment by eligible qualified heir treatment as ma-  
13 terial participation).

14           “(H) Section 2032A(e)(10) (relating to  
15 community property).

16           “(I) Section 2032A(e)(14) (relating to  
17 treatment of replacement property acquired in  
18 section 1031 or 1033 transactions).

19           “(J) Section 2032A(f) (relating to statute  
20 of limitations).

21           “(K) Section 6166(b)(3) (relating to farm-  
22 houses and certain other structures taken into  
23 account).

1           “(L) Subparagraphs (B), (C), and (D) of  
2           section 6166(g)(1) (relating to acceleration of  
3           payment).”

4           (b) CLERICAL AMENDMENT.—The table of sections  
5 for part III of subchapter A of chapter 11 of the Internal  
6 Revenue Code of 1986 is amended by inserting after the  
7 item relating to section 2033 the following new item:

          “Sec. 2033A. Family-owned business exclusion.”

8           (c) EFFECTIVE DATE.—The amendments made by  
9 this section shall apply to estates of decedents dying after  
10 December 31, 1995.

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