

104TH CONGRESS
2D SESSION

S. 2173

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.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30, 1996

Mr. DORGAN 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 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 “Family Business Es-
5 tate Tax Relief Act of 1996”.

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

7 (a) IN GENERAL.—Part III of subchapter A of chap-
8 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. FAMILY-OWNED BUSINESS EXCLUSION.**

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

7 “(1) the adjusted value of the qualified family-
8 owned business interests of the decedent otherwise
9 includible in the estate, or

10 “(2) \$900,000, reduced by the amount of any
11 exclusion allowed under this section with respect to
12 the estate of a previously deceased spouse of the de-
13 cedent.

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

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

17 “(A) the decedent was (at the date of the
18 decedent’s death) a citizen or resident of the
19 United States,

20 “(B) the sum of—

21 “(i) the adjusted value of the qualified
22 family-owned business interests described
23 in paragraph (2), plus

24 “(ii) the amount of the gifts of such
25 interests determined under paragraph (3),

1 exceeds 50 percent of the adjusted gross estate,
2 and

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

7 “(i) such interests were owned by the
8 decedent or a member of the decedent’s
9 family, and

10 “(ii) there was material participation
11 (within the meaning of section
12 2032A(e)(6)) by the decedent or a member
13 of the decedent’s family in the operation of
14 the business to which such interests relate.

15 “(2) INCLUDIBLE QUALIFIED FAMILY-OWNED
16 BUSINESS INTERESTS.—The qualified family-owned
17 business interests described in this paragraph are
18 the interests which—

19 “(A) are included in determining the value
20 of the gross estate (without regard to this sec-
21 tion), and

22 “(B) are acquired by any qualified heir
23 from, or passed to any qualified heir from, the
24 decedent (within the meaning of section
25 2032A(e)(9)).

1 “(3) INCLUDIBLE GIFTS OF INTERESTS.—The
2 amount of the gifts of qualified family-owned busi-
3 ness interests determined under this paragraph is
4 the excess of—

5 “(A) the sum of—

6 “(i) the amount of such gifts from the
7 decedent to members of the decedent’s
8 family taken into account under subsection
9 2001(b)(1)(B), plus

10 “(ii) the amount of such gifts other-
11 wise excluded under section 2503(b),
12 to the extent such interests are continuously
13 held by members of such family (other than the
14 decedent’s spouse) between the date of the gift
15 and the date of the decedent’s death, over

16 “(B) the amount of such gifts from the de-
17 cedent to members of the decedent’s family oth-
18 erwise included in the gross estate.

19 “(c) ADJUSTED GROSS ESTATE.—For purposes of
20 this section, the term ‘adjusted gross estate’ means the
21 value of the gross estate (determined without regard to
22 this section)—

23 “(1) reduced by any amount deductible under
24 paragraph (3) or (4) of section 2053(a), and

25 “(2) increased by the excess of—

1 “(A) the sum of—

2 “(i) the amount of gifts determined
3 under subsection (b)(3), plus

4 “(ii) the amount (if more than de
5 minimis) of other transfers from the dece-
6 dent to the decedent’s spouse (at the time
7 of the transfer) within 10 years of the date
8 of the decedent’s death, plus

9 “(iii) the amount of other gifts (not
10 included under clause (i) or (ii)) from the
11 decedent within 3 years of such date, other
12 than gifts to members of the decedent’s
13 family otherwise excluded under section
14 2503(b), over

15 “(B) the sum of the amounts described in
16 clauses (i), (ii), and (iii) of subparagraph (A)
17 which are otherwise includible in the gross es-
18 tate.

19 For purposes of the preceding sentence, the Secretary may
20 provide that de minimis gifts to persons other than mem-
21 bers of the decedent’s family shall not be taken into ac-
22 count.

23 “(d) ADJUSTED VALUE OF THE QUALIFIED FAMILY-
24 OWNED BUSINESS INTERESTS.—For purposes of this sec-
25 tion, the adjusted value of any qualified family-owned

1 business interest is the value of such interest for purposes
 2 of this chapter (determined without regard to this sec-
 3 tion), reduced by the excess of—

4 “(1) any amount deductible under paragraph
 5 (3) or (4) of section 2053(a), over

6 “(2) the sum of—

7 “(A) any indebtedness on any qualified
 8 residence of the decedent the interest on which
 9 is deductible under section 163(h)(3), plus

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

16 “(C) any indebtedness not described in
 17 clause (i) or (ii), to the extent such indebted-
 18 ness does not exceed \$10,000.

19 “(e) QUALIFIED FAMILY-OWNED BUSINESS INTER-
 20 EST.—

21 “(1) IN GENERAL.—For purposes of this sec-
 22 tion, the term ‘qualified family-owned business inter-
 23 est’ 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 dece-
7 dent’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 “(2) LIMITATION.—Such term shall not in-
18 clude—

19 “(A) any interest in a trade or business
20 the principal place of business of which is not
21 located in the United States,

22 “(B) any interest in an entity, if the stock
23 or debt of such entity or a controlled group (as
24 defined in section 267(f)(1)) of which such en-
25 tity was a member was readily tradable on an

1 established securities market or secondary mar-
2 ket (as defined by the Secretary) at any time
3 within 3 years of the date of the decedent's
4 death,

5 “(C) any interest in a trade or business
6 not described in section 542(c)(2), if more than
7 35 percent of the adjusted ordinary gross in-
8 come of such trade or business for the taxable
9 year which includes the date of the decedent's
10 death would qualify as personal holding com-
11 pany income (as defined in section 543(a)),

12 “(D) that portion of an interest in a trade
13 or business that is attributable to—

14 “(i) cash or marketable securities, or
15 both, in excess of the reasonably expected
16 day-to-day working capital needs of such
17 trade or business, and

18 “(ii) any other assets of the trade or
19 business (other than assets used in the ac-
20 tive conduct of a trade or business de-
21 scribed in section 542(c)(2)), the income of
22 which is described in section 543(a) or in
23 subparagraph (B), (C), (D), or (E) of sec-
24 tion 954(c)(1) (determined by substituting

1 ‘trade or business’ for ‘controlled foreign
2 corporation’).

3 “(3) RULES REGARDING OWNERSHIP.—

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

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

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

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

24 “(i) such ownership interest in the
25 other trade or business shall be dis-

1 regarded in determining if the ownership
2 interest in the first trade or business is a
3 qualified family-owned business interest,
4 and

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

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

18 “(f) TAX TREATMENT OF FAILURE TO MATERIALLY
19 PARTICIPATE IN BUSINESS OR DISPOSITIONS OF INTER-
20 ESTS.—

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

1 “(A) the material participation require-
2 ments described in section 2032A(c)(6)(B) are
3 not met with respect to the qualified family-
4 owned business interest which was acquired (or
5 passed) from the decedent,

6 “(B) the qualified heir disposes of any por-
7 tion of a qualified family-owned business inter-
8 est (other than by a disposition to a member of
9 the qualified heir’s family or through a qualified
10 conservation contribution under section
11 170(h)),

12 “(C) the qualified heir loses United States
13 citizenship (within the meaning of section 877)
14 or with respect to whom an event described in
15 subparagraph (A) or (B) of section 877(e)(1)
16 occurs, and such heir does not comply with the
17 requirements of subsection (g), or

18 “(D) the principal place of business of a
19 trade or business of the qualified family-owned
20 business interest ceases to be located in the
21 United States.

22 “(2) ADDITIONAL ESTATE TAX.—

23 “(A) IN GENERAL.—The amount of the
24 additional estate tax imposed by paragraph (1)
25 shall be equal to—

1 “(i) the applicable percentage of the
 2 adjusted tax difference attributable to the
 3 qualified family-owned business interest
 4 (as determined under rules similar to the
 5 rules of section 2032A(c)(2)(B)), plus

6 “(ii) interest on the amount deter-
 7 mined under clause (i) at the underpay-
 8 ment rate established under section 6621
 9 for the period beginning on the date the
 10 estate tax liability was due under this
 11 chapter and ending on the date such addi-
 12 tional estate tax is due.

13 “(B) APPLICABLE PERCENTAGE.—For
 14 purposes of this paragraph, the applicable per-
 15 centage shall be determined under the following
 16 table:

“If the event described in paragraph (1) occurs in the following year of material participation:	The applicable percentage is:
1 through 6	100
7	80
8	60
9	40
10	20.

17 “(g) SECURITY REQUIREMENTS FOR NONCITIZEN
 18 QUALIFIED HEIRS.—

19 “(1) IN GENERAL.—Except upon the applica-
 20 tion of subparagraph (F) or (M) of subsection
 21 (h)(3), if a qualified heir is not a citizen of the Unit-

1 ed States, any interest under this section passing to
2 or acquired by such heir (including any interest held
3 by such heir at a time described in subsection
4 (f)(1)(C)) shall be treated as a qualified family-
5 owned business interest only if the interest passes or
6 is acquired (or is held) in a qualified trust.

7 “(2) QUALIFIED TRUST.—The term ‘qualified
8 trust’ means a trust—

9 “(A) which is organized under, and gov-
10 erned by, the laws of the United States or a
11 State, and

12 “(B) except as otherwise provided in regu-
13 lations, with respect to which the trust instru-
14 ment requires that at least 1 trustee of the
15 trust be an individual citizen of the United
16 States or a domestic corporation.

17 “(h) OTHER DEFINITIONS AND APPLICABLE
18 RULES.—For purposes of this section—

19 “(1) QUALIFIED HEIR.—The term ‘qualified
20 heir’—

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

23 “(B) includes any active employee of the
24 trade or business to which the qualified family-
25 owned business interest relates if such employee

1 has been employed by such trade or business
2 for a period of at least 10 years before the date
3 of the decedent's death.

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

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

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

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

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

15 “(D) Section 2032A(c)(3) (relating to only
16 1 additional tax imposed with respect to any 1
17 portion).

18 “(E) Section 2032A(c)(4) (relating to due
19 date).

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

22 “(G) Section 2032A(c)(7) (relating to no
23 tax if use begins within 2 years; active manage-
24 ment by eligible qualified heir treated as mate-
25 rial participation).

1 “(H) Section 2032A(e)(10) (relating to
2 community property).

3 “(I) Section 2032A(e)(14) (relating to
4 treatment of replacement property acquired in
5 section 1031 or 1033 transactions).

6 “(J) Section 2032A(f) (relating to statute
7 of limitations).

8 “(K) Section 6166(b)(3) (relating to farm-
9 houses and certain other structures taken into
10 account).

11 “(L) Subparagraphs (B), (C), and (D) of
12 section 6166(g)(1) (relating to acceleration of
13 payment).

14 “(M) Section 6324B (relating to special
15 lien for additional estate tax).”.

16 (b) CLERICAL AMENDMENT.—The table of sections
17 for part III of subchapter A of chapter 11 is amended
18 by inserting after the item relating to section 2033 the
19 following new item:

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

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to estates of decedents dying after
22 December 31, 1996.

1 **SEC. 3. PORTION OF ESTATE TAX SUBJECT TO 4-PERCENT**
2 **INTEREST RATE INCREASED TO \$1,600,000.**

3 (a) **IN GENERAL.**—Subparagraph (B) of section
4 6601(j)(2) of the Internal Revenue Code of 1986 (defining
5 4-percent portion) is amended by striking “\$345,800” and
6 inserting “\$600,800”.

7 (b) **EFFECTIVE DATE.**—The amendment made by
8 this section shall apply to estates of decedents dying after
9 December 31, 1996.

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