

105TH CONGRESS  
1ST SESSION

# S. 482

To amend the Internal Revenue Code of 1986 to partially exclude from the gross estate of a decedent the value of a family-owned business, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 20, 1997

Ms. COLLINS (for herself, Ms. SNOWE, Mr. HATCH, and Mr. COCHRAN) 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 partially exclude from the gross estate of a decedent the value of a family-owned business, 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 and  
5 Family Farm Preservation Act of 1997”.

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) the sum of—

11 “(A) \$400,000, plus

12 “(B) 50 percent of the excess (if any) of  
13 the adjusted value of such interests over  
14 \$400,000, but not over \$1,500,000.

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

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

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

21 “(B) the sum of—

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

1 “(ii) the amount of the gifts of such  
2 interests determined under paragraph (3),  
3 exceeds 50 percent of the adjusted gross estate,  
4 and

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

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

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

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

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

24 “(B) are acquired by any qualified heir  
25 from, or passed to any qualified heir from, the

1           decedent (within the meaning of section  
2           2032A(e)(9)).

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

7                   “(A) the sum of—

8                           “(i) the amount of such gifts from the  
9                           decedent to members of the decedent’s  
10                          family taken into account under subsection  
11                          2001(b)(1)(B), plus

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

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

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

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

3           “(2) increased by the excess of—

4           “(A) the sum of—

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

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

12           “(iii) the amount of other gifts (not  
13 included under clause (i) or (ii)) from the  
14 decedent within 3 years of such date, other  
15 than gifts to members of the decedent’s  
16 family otherwise excluded under section  
17 2503(b), over

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

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

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 paragraph  
8 (3) or (4) of section 2053(a), 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 clause (i) or (ii), to the extent such indebted-  
21 ness 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 in an entity carrying on  
 7                   a trade or business, if—

8                           “(i) at least—

9                                   “(I) 50 percent of such entity is  
 10                                   owned (directly or indirectly) by the  
 11                                   decedent and members of the dece-  
 12                                   dent’s family,

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

15                                   “(III) 90 percent of such entity  
 16                                   is so owned by members of 3 families,  
 17                                   and

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

22           “(2) LIMITATION.—Such term shall not in-  
 23           clude—

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

4           “(B) any interest in an entity, if the stock  
5           or debt of such entity or a controlled group (as  
6           defined in section 267(f)(1)) of which such en-  
7           tity was a member was readily tradable on an  
8           established securities market or secondary mar-  
9           ket (as defined by the Secretary) at any time  
10          within 3 years of the date of the decedent’s  
11          death,

12          “(C) any interest in a trade or business  
13          not described in section 542(c)(2), if more than  
14          35 percent of the adjusted ordinary gross in-  
15          come of such trade or business for the taxable  
16          year which includes the date of the decedent’s  
17          death would qualify as personal holding com-  
18          pany income (as defined in section 543(a)),

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

21                  “(i) cash or marketable securities, or  
22                  both, in excess of the reasonably expected  
23                  day-to-day working capital needs of such  
24                  trade or business, and

1           “(ii) any other assets of the trade or  
2           business (other than assets used in the ac-  
3           tive conduct of a trade or business de-  
4           scribed in section 542(c)(2)), the income of  
5           which is described in section 543(a) or in  
6           subparagraph (B), (C), (D), or (E) of sec-  
7           tion 954(c)(1) (determined by substituting  
8           ‘trade or business’ for ‘controlled foreign  
9           corporation’).

10           “(3) RULES REGARDING OWNERSHIP.—

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

13           “(i) CORPORATIONS.—Ownership of a  
14           corporation shall be determined by the  
15           holding of stock possessing the appropriate  
16           percentage of the total combined voting  
17           power of all classes of stock entitled to vote  
18           and the appropriate percentage of the total  
19           value of shares of all classes of stock.

20           “(ii) PARTNERSHIPS.—Ownership of a  
21           partnership shall be determined by the  
22           owning of the appropriate percentage of  
23           the capital interest in such partnership.

24           “(B) OWNERSHIP OF TIERED ENTITIES.—

25           For purposes of this section, if by reason of

1 holding an interest in a trade or business, a de-  
2 cendent, any member of the decedent's family,  
3 any qualified heir, or any member of any quali-  
4 fied heir's family is treated as holding an inter-  
5 est in any other trade or business—

6 “(i) such ownership interest in the  
7 other trade or business shall be dis-  
8 regarded in determining if the ownership  
9 interest in the first trade or business is a  
10 qualified family-owned business interest,  
11 and

12 “(ii) this section shall be applied sepa-  
13 rately in determining if such interest in  
14 any other trade or business is a qualified  
15 family-owned business interest.

16 “(C) INDIVIDUAL OWNERSHIP RULES.—

17 For purposes of this section, an interest owned,  
18 directly or indirectly, by or for an entity de-  
19 scribed in paragraph (1)(B) shall be considered  
20 as being owned proportionately by or for the en-  
21 tity's shareholders, partners, or beneficiaries. A  
22 person shall be treated as a beneficiary of any  
23 trust only if such person has a present interest  
24 in such trust.

1       “(f) TAX TREATMENT OF FAILURE TO MATERIALLY  
2 PARTICIPATE IN BUSINESS OR DISPOSITIONS OF INTER-  
3 ESTS.—

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

8           “(A) the material participation require-  
9 ments described in section 2032A(c)(6)(B) are  
10 not met with respect to the qualified family-  
11 owned business interest which was acquired (or  
12 passed) from the decedent,

13           “(B) the qualified heir disposes of any por-  
14 tion of a qualified family-owned business inter-  
15 est (other than by a disposition to a member of  
16 the qualified heir’s family or through a qualified  
17 conservation contribution under section  
18 170(h)),

19           “(C) the qualified heir loses United States  
20 citizenship (within the meaning of section 877)  
21 or with respect to whom an event described in  
22 subparagraph (A) or (B) of section 877(e)(1)  
23 occurs, and such heir does not comply with the  
24 requirements of subsection (g), or

1           “(D) the principal place of business of a  
2 trade or business of the qualified family-owned  
3 business interest ceases to be located in the  
4 United States.

5           “(2) ADDITIONAL ESTATE TAX.—

6           “(A) IN GENERAL.—The amount of the  
7 additional estate tax imposed by paragraph (1)  
8 shall be equal to—

9           “(i) the applicable percentage of the  
10 adjusted tax difference attributable to the  
11 qualified family-owned business interest  
12 (as determined under rules similar to the  
13 rules of section 2032A(c)(2)(B)), plus

14           “(ii) interest on the amount deter-  
15 mined under clause (i) at the underpay-  
16 ment rate established under section 6621  
17 for the period beginning on the date the  
18 estate tax liability was due under this  
19 chapter and ending on the date such addi-  
20 tional estate tax is due.

21           “(B) APPLICABLE PERCENTAGE.—For  
22 purposes of this paragraph, the applicable per-  
23 centage shall be determined under the following  
24 table:

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

1       “(g) SECURITY REQUIREMENTS FOR NONCITIZEN  
2 QUALIFIED HEIRS.—

3               “(1) IN GENERAL.—Except upon the applica-  
4 tion of subparagraph (F) or (M) of subsection  
5 (h)(3), if a qualified heir is not a citizen of the Unit-  
6 ed States, any interest under this section passing to  
7 or acquired by such heir (including any interest held  
8 by such heir at a time described in subsection  
9 (f)(1)(C)) shall be treated as a qualified family-  
10 owned business interest only if the interest passes or  
11 is acquired (or is held) in a qualified trust.

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

14                       “(A) which is organized under, and gov-  
15 erned by, the laws of the United States or a  
16 State, and

17                       “(B) except as otherwise provided in regu-  
18 lations, with respect to which the trust instru-  
19 ment requires that at least 1 trustee of the  
20 trust be an individual citizen of the United  
21 States or a domestic corporation.

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

3           “(1) QUALIFIED HEIR.—The term ‘qualified  
4 heir’—

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

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

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

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

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

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

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

1           “(D) Section 2032A(c)(3) (relating to only  
2           1 additional tax imposed with respect to any 1  
3           portion).

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

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

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

12          “(H) Section 2032A(e)(10) (relating to  
13          community property).

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

17          “(J) Section 2032A(f) (relating to statute  
18          of limitations).

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

22          “(L) Subparagraphs (B), (C), and (D) of  
23          section 6166(g)(1) (relating to acceleration of  
24          payment).

1           “(M) Section 6324B (relating to special  
2           lien for additional estate tax).

3           “(4) COORDINATION WITH OTHER ESTATE TAX  
4           BENEFITS.—If there is a reduction in the value of  
5           the gross estate under this section—

6           “(A) the dollar limitation applicable under  
7           section 2032A(a)(2), and

8           “(B) the \$1,000,000 amount under section  
9           6601(j)(3) (as adjusted),  
10          shall each be reduced (but not below zero) by the  
11          amount of such reduction.”

12          (b) CONFORMING AMENDMENT.—The table of sec-  
13          tions for part III of subchapter A of chapter 11 of the  
14          Internal Revenue Code of 1986 is amended by inserting  
15          after the item relating to section 2033 the following new  
16          item:

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

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

20          **SEC. 3. 20-YEAR INSTALLMENT PAYMENT WHERE ESTATE**  
21                                 **CONSISTS LARGELY OF INTEREST IN CLOSE-**  
22                                 **LY HELD BUSINESS.**

23          (a) IN GENERAL.—Section 6166(a) (relating to ex-  
24          tension of time for payment of estate tax where estate con-  
25          sists largely of interest in closely held business) is amend-

1 ed by striking “10” in paragraph (1) and the heading  
2 thereof and inserting “20”.

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

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