

109TH CONGRESS
1ST SESSION

H. R. 1624

To amend the Internal Revenue Code of 1986 to provide for the immediate and permanent repeal of the estate tax on family-owned businesses and farms, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 13, 2005

Mr. THOMPSON of California (for himself, Mr. BOSWELL, Mr. SALAZAR, Mr. CRAMER, Mr. BISHOP of Georgia, Ms. HERSETH, Mr. CHANDLER, Mrs. TAUSCHER, Mr. COSTA, Mr. ISRAEL, Mr. CARDOZA, Mr. BERRY, Mrs. MCCARTHY, and Ms. HOOLEY) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide for the immediate and permanent repeal of the estate tax on family-owned businesses and farms, 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 “Estate Tax Repeal for
5 Family-Owned Farms and Businesses Act of 2005”.

1 **SEC. 2. REPEAL OF ESTATE TAX ON FAMILY-OWNED FARMS**
2 **AND BUSINESSES.**

3 (a) REPEAL OF QUALIFIED FAMILY-OWNED BUSI-
4 NESS INTEREST.—Part IV of subchapter A of chapter 11
5 of the Internal Revenue Code of 1986 (relating to taxable
6 estate) is amended by striking section 2057.

7 (b) EXCLUSION FOR QUALIFIED FAMILY-OWNED
8 BUSINESS INTERESTS.—Part IV of subchapter A of chap-
9 ter 11 of the Internal Revenue Code of 1986 (relating to
10 taxable estate) is amended by inserting after section 2058
11 the following new section:

12 **“SEC. 2059. EXCLUSION FOR QUALIFIED FAMILY-OWNED**
13 **BUSINESS INTERESTS.**

14 “(a) GENERAL RULES.—

15 “(1) ALLOWANCE OF DEDUCTION.—For pur-
16 poses of the tax imposed by section 2001, in the
17 case of an estate of a decedent to which this section
18 applies, the value of the taxable estate shall be de-
19 termined by deducting from the value of the gross
20 estate the adjusted value of the qualified family-
21 owned business interests of the decedent which are
22 described in subsection (b)(2).

23 “(2) APPLICATION OF CARRYOVER BASIS
24 RULES.—With respect to the adjusted value of the
25 qualified family-owned business interests of the dece-

1 dent which are described in subsection (b)(2), the
2 rules of section 1023 shall apply.

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

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

6 “(A) the decedent was (at the date of the
7 decedent’s death) a citizen or resident of the
8 United States,

9 “(B) the executor elects the application of
10 this section under rules similar to the rules of
11 paragraphs (1) and (3) of section 2032A(d) and
12 files the agreement referred to in subsection (e),
13 and

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

18 “(i) the qualified family-owned busi-
19 ness interests described in paragraph (2)
20 were owned by the decedent or a member
21 of the decedent’s family, and

22 “(ii) there was material participation
23 (within the meaning of section
24 2032A(e)(6)) by the decedent, a member
25 of the decedent’s family, or a qualified heir

1 in the operation of the business to which
2 such interests relate.

3 “(2) INCLUDIBLE QUALIFIED FAMILY-OWNED
4 BUSINESS INTERESTS.—The qualified family-owned
5 business interests described in this paragraph are
6 the interests which—

7 “(A) are included in determining the value
8 of the gross estate (other than qualified spousal
9 property with respect to which an aggregate
10 spousal property basis increase is allocated
11 under section 1023(c)),

12 “(B) are acquired by any qualified heir
13 from, or passed to any qualified heir from, the
14 decedent (within the meaning of section
15 2032A(e)(9)), and

16 “(C) are subject to the election under
17 paragraph (1)(B).

18 “(3) RULES REGARDING MATERIAL PARTICIPA-
19 TION.—For purposes of paragraph (1)(C)(ii)—

20 “(A) in the case a surviving spouse, mate-
21 rial participation by such spouse may be satis-
22 fied under rules similar to the rules under sec-
23 tion 2032A(b)(5),

24 “(B) in the case of a qualified family-
25 owned business interest in an entity carrying on

1 multiple trades or businesses, material partici-
2 pation in each trade or business is satisfied by
3 material participation in the entity or in 1 or
4 more of the multiple trades or businesses, and

5 “(C) in the case of a lending and finance
6 business (as defined in section
7 6166(b)(10)(B)(ii)), material participation is
8 satisfied under the rules under subclause (I) or
9 (II) of section 6166(b)(10)(B)(i).

10 “(c) ADJUSTED VALUE OF THE QUALIFIED FAMILY-
11 OWNED BUSINESS INTERESTS.—For purposes of this sec-
12 tion—

13 “(1) IN GENERAL.—The adjusted value of any
14 qualified family-owned business interest is the value
15 of such interest for purposes of this chapter (deter-
16 mined without regard to this section), as adjusted
17 under paragraph (2).

18 “(2) ADJUSTMENT FOR PREVIOUS TRANS-
19 FERS.—The Secretary may increase the value of any
20 qualified family-owned business interest by that por-
21 tion of those assets transferred from such qualified
22 family-owned business interest to the decedent’s tax-
23 able estate within 3 years before the date of the de-
24 cedent’s death.

1 “(d) QUALIFIED FAMILY-OWNED BUSINESS INTER-
2 EST.—

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

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

8 “(B) an interest in an entity carrying on
9 a trade or business, if—

10 “(i) at least—

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

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

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

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

24 For purposes of the preceding sentence, a decedent
25 shall be treated as engaged in a trade or business

1 if any member of the decedent's family is engaged
2 in such trade or business.

3 “(2) LENDING AND FINANCE BUSINESS.—For
4 purposes of this section, any asset used in a lending
5 and finance business (as defined in section
6 6166(b)(10)(B)(ii)) shall be treated as an asset
7 which is used in carrying on a trade or business.

8 “(3) LIMITATION.—Such term shall not in-
9 clude—

10 “(A) any interest in a trade or business
11 the principal place of business of which is not
12 located in the United States,

13 “(B) any interest in an entity, if the stock
14 or debt of such entity or a controlled group (as
15 defined in section 267(f)(1)) of which such enti-
16 ty was a member was readily tradable on an es-
17 tablished securities market or secondary market
18 (as defined by the Secretary) at any time,

19 “(C) that portion of an interest in an enti-
20 ty transferred by gift to such entity within 3
21 years before the date of the decedent's death,
22 and

23 “(D) that portion of an interest in an enti-
24 ty which is attributable to cash or marketable
25 securities, or both, in any amount in excess of

1 the reasonably anticipated business needs of
2 such entity.

3 In any proceeding before the United States Tax
4 Court involving a notice of deficiency based in whole
5 or in part on the allegation that cash or marketable
6 securities, or both, are accumulated in an amount in
7 excess of the reasonably anticipated business needs
8 of such entity, the burden of proof with respect to
9 such allegation shall be on the Secretary to the ex-
10 tent such cash or marketable securities are less than
11 35 percent of the value of the interest in such entity.

12 “(4) RULES REGARDING OWNERSHIP.—

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

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

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

1 “(B) OWNERSHIP OF TIERED ENTITIES.—
2 For purposes of this section, if by reason of
3 holding an interest in a trade or business, a de-
4 cedent, any member of the decedent’s family,
5 any qualified heir, or any member of any quali-
6 fied heir’s family is treated as holding an inter-
7 est in any other trade or business—

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

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

18 “(C) INDIVIDUAL OWNERSHIP RULES.—
19 For purposes of this section, an interest owned,
20 directly or indirectly, by or for an entity de-
21 scribed in paragraph (1)(B) shall be considered
22 as being owned proportionately by or for the en-
23 tity’s shareholders, partners, or beneficiaries. A
24 person shall be treated as a beneficiary of any

1 trust only if such person has a present interest
2 in such trust.

3 “(e) AGREEMENT.—The agreement referred to in
4 this subsection is a written agreement signed by each per-
5 son in being who has an interest (whether or not in posses-
6 sion) in any property designated in such agreement con-
7 senting to the application of this section with respect to
8 such property.

9 “(f) OTHER DEFINITIONS AND APPLICABLE
10 RULES.—For purposes of this section—

11 “(1) QUALIFIED HEIR.—The term ‘qualified
12 heir’ means a United States citizen who is—

13 “(A) described in section 2032A(e)(1), or

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

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

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

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

3 “(B) Section 2032A(e)(10) (relating to
4 community property).

5 “(C) Section 2032A(e)(14) (relating to
6 treatment of replacement property acquired in
7 section 1031 or 1033 transactions).

8 “(D) Section 2032A(g) (relating to appli-
9 cation to interests in partnerships, corporations,
10 and trusts).

11 “(4) SAFE HARBOR FOR ACTIVE ENTITIES
12 HELD BY ENTITY CARRYING ON A TRADE OR BUSI-
13 NESS.—For purposes of this section, if—

14 “(A) an entity carrying on a trade or busi-
15 ness owns 20 percent or more in value of the
16 voting interests of another entity, or such other
17 entity has 15 or fewer owners, and

18 “(B) 80 percent or more of the value of
19 the assets of each such entity is attributable to
20 assets used in an active business operation,
21 then the requirements under subsections
22 (b)(1)(C)(ii) and (d)(3)(D) shall be met with respect
23 to an interest in such an entity.”.

24 (c) MODIFICATION OF TREATMENT OF MARITAL DE-
25 DUCTION; LIMITATION ON STEP-UP IN BASIS.—Section

1 2056 of the Internal Revenue Code of 1986 (relating to
 2 bequests, etc., to surviving spouses) is amended by adding
 3 at the end the following new subsection:

4 “(e) APPLICATION OF CARRYOVER BASIS RULES.—
 5 With respect to the value of the interests of the decedent
 6 which are described in subsection (a), the rules of section
 7 1023 shall apply.”.

8 (d) CARRYOVER BASIS RULES FOR QUALIFIED FAM-
 9 ILY-OWNED BUSINESS INTERESTS AND SPOUSAL PROP-
 10 ERTY.—Part II of subchapter O of chapter 1 of the Inter-
 11 nal Revenue Code of 1986 (relating to basis rules of gen-
 12 eral application) is amended by redesignating section 1023
 13 as section 1024 and inserting after section 1022 the fol-
 14 lowing new section:

15 **“SEC. 1023. TREATMENT OF QUALIFIED FAMILY-OWNED**
 16 **BUSINESS INTERESTS AND SPOUSAL PROP-**
 17 **ERTY.**

18 “(a) IN GENERAL.—Except as otherwise provided in
 19 this section—

20 “(1) qualified property acquired from a dece-
 21 dent shall be treated for purposes of this subtitle as
 22 transferred by gift, and

23 “(2) the basis of the person acquiring qualified
 24 property from such a decedent shall be the lesser
 25 of—

1 “(A) the adjusted basis of the decedent, or

2 “(B) the fair market value of the property

3 at the date of the decedent’s death.

4 “(b) QUALIFIED PROPERTY.—For purposes of this
5 section, the term ‘qualified property’ means—

6 “(1) the qualified family-owned business inter-
7 ests of the decedent with respect to which an elec-
8 tion is made under section 2059(b)(1)(B), and

9 “(2) the qualified spousal property.

10 “(c) ADDITIONAL BASIS INCREASE FOR PROPERTY
11 ACQUIRED BY SURVIVING SPOUSE.—

12 “(1) IN GENERAL.—In the case of property to
13 which this subsection applies and which is qualified
14 spousal property, the basis of such property under
15 subsection (a) shall be increased by its spousal prop-
16 erty basis increase.

17 “(2) SPOUSAL PROPERTY BASIS INCREASE.—
18 For purposes of this subsection—

19 “(A) IN GENERAL.—The spousal property
20 basis increase for property referred to in para-
21 graph (1) is the portion of the aggregate spousal
22 property basis increase which is allocated to
23 the property pursuant to this section.

24 “(B) AGGREGATE SPOUSAL PROPERTY
25 BASIS INCREASE.—In the case of any estate,

1 the aggregate spousal property basis increase is
2 \$3,000,000.

3 “(3) QUALIFIED SPOUSAL PROPERTY.—For
4 purposes of this section, the term ‘qualified spousal
5 property’ means any interest in property which
6 passes or has passed from the decedent to the dece-
7 dent’s surviving spouse with respect to which a de-
8 duction is allowed under section 2056.

9 “(4) DEFINITIONS AND SPECIAL RULES.—

10 “(A) PROPERTY TO WHICH SUBSECTION
11 APPLIES.—The basis of property acquired from
12 a decedent may be increased under this sub-
13 section only if the property was owned by the
14 decedent at the time of death.

15 “(B) RULES RELATING TO OWNERSHIP.—

16 “(i) JOINTLY HELD PROPERTY.—In
17 the case of property which was owned by
18 the decedent and another person as joint
19 tenants with right of survivorship or ten-
20 ants by the entirety—

21 “(I) if the only such other person
22 is the surviving spouse, the decedent
23 shall be treated as the owner of only
24 50 percent of the property,

1 “(II) in any case (to which sub-
2 clause (I) does not apply) in which the
3 decedent furnished consideration for
4 the acquisition of the property, the de-
5 cedent shall be treated as the owner
6 to the extent of the portion of the
7 property which is proportionate to
8 such consideration, and

9 “(III) in any case (to which sub-
10 clause (I) does not apply) in which the
11 property has been acquired by gift,
12 bequest, devise, or inheritance by the
13 decedent and any other person as
14 joint tenants with right of survivor-
15 ship and their interests are not other-
16 wise specified or fixed by law, the de-
17 cedent shall be treated as the owner
18 to the extent of the value of a frac-
19 tional part to be determined by divid-
20 ing the value of the property by the
21 number of joint tenants with right of
22 survivorship.

23 “(ii) REVOCABLE TRUSTS.—The dece-
24 dent shall be treated as owning property
25 transferred by the decedent during life to

1 a qualified revocable trust (as defined in
2 section 645(b)(1)).

3 “(iii) POWERS OF APPOINTMENT.—

4 The decedent shall not be treated as own-
5 ing any property by reason of holding a
6 power of appointment with respect to such
7 property.

8 “(iv) COMMUNITY PROPERTY.—Prop-
9 erty which represents the surviving
10 spouse’s one-half share of community prop-
11 erty held by the decedent and the surviving
12 spouse under the community property laws
13 of any State or possession of the United
14 States or any foreign country shall be
15 treated for purposes of this section as
16 owned by, and acquired from, the decedent
17 if at least one-half of the whole of the com-
18 munity interest in such property is treated
19 as owned by, and acquired from, the dece-
20 dent without regard to this clause.

21 “(C) PROPERTY ACQUIRED BY DECEDENT
22 BY GIFT WITHIN 3 YEARS OF DEATH.—

23 “(i) IN GENERAL.—This subsection
24 shall not apply to property acquired by the
25 decedent by gift or by inter vivos transfer

1 for less than adequate and full consider-
2 ation in money or money's worth during
3 the 3-year period ending on the date of the
4 decedent's death.

5 “(ii) EXCEPTION FOR CERTAIN GIFTS
6 FROM SPOUSE.—Clause (i) shall not apply
7 to property acquired by the decedent from
8 the decedent's spouse unless, during such
9 3-year period, such spouse acquired the
10 property in whole or in part by gift or by
11 inter vivos transfer for less than adequate
12 and full consideration in money or money's
13 worth.

14 “(D) STOCK OF CERTAIN ENTITIES.—This
15 subsection shall not apply to—

16 “(i) stock or securities of a foreign
17 personal holding company,

18 “(ii) stock of a DISC or former
19 DISC,

20 “(iii) stock of a foreign investment
21 company, or

22 “(iv) stock of a passive foreign invest-
23 ment company unless such company is a
24 qualified electing fund (as defined in sec-
25 tion 1295) with respect to the decedent.

1 “(E) FAIR MARKET VALUE LIMITATION.—

2 The adjustments under this subsection shall not
3 increase the basis of any interest in property
4 acquired from the decedent above its fair mar-
5 ket value in the hands of the decedent as of the
6 date of the decedent’s death.

7 “(d) PROPERTY ACQUIRED FROM THE DECEDENT.—

8 For purposes of this section, the following property shall
9 be considered to have been acquired from the decedent:

10 “(1) Property acquired by bequest, devise, or
11 inheritance, or by the decedent’s estate from the de-
12 cedent.

13 “(2) Property transferred by the decedent dur-
14 ing his lifetime—

15 “(A) to a qualified revocable trust (as de-
16 fined in section 645(b)(1)), or

17 “(B) to any other trust with respect to
18 which the decedent reserved the right to make
19 any change in the enjoyment thereof through
20 the exercise of a power to alter, amend, or ter-
21 minate the trust.

22 “(3) Any other property passing from the dece-
23 dent by reason of death to the extent that such
24 property passed without consideration.

1 “(e) COORDINATION WITH SECTION 691.—This sec-
2 tion shall not apply to property which constitutes a right
3 to receive an item of income in respect of a decedent under
4 section 691.

5 “(f) CERTAIN LIABILITIES DISREGARDED.—

6 “(1) IN GENERAL.—In determining whether
7 gain is recognized on the acquisition of property—

8 “(A) from a decedent by a decedent’s es-
9 tate or any beneficiary other than a tax-exempt
10 beneficiary, and

11 “(B) from the decedent’s estate by any
12 beneficiary other than a tax-exempt beneficiary,
13 and in determining the adjusted basis of such prop-
14 erty, liabilities in excess of basis shall be dis-
15 regarded.

16 “(2) TAX-EXEMPT BENEFICIARY.—For pur-
17 poses of paragraph (1), the term ‘tax-exempt bene-
18 ficiary’ means—

19 “(A) the United States, any State or polit-
20 ical subdivision thereof, any possession of the
21 United States, any Indian tribal government
22 (within the meaning of section 7871), or any
23 agency or instrumentality of any of the fore-
24 going,

1 “(B) an organization (other than a cooper-
2 ative described in section 521) which is exempt
3 from tax imposed by chapter 1,

4 “(C) any foreign person or entity (within
5 the meaning of section 168(h)(2)), and

6 “(D) to the extent provided in regulations,
7 any person to whom property is transferred for
8 the principal purpose of tax avoidance.

9 “(g) REGULATIONS.—The Secretary shall prescribe
10 such regulations as may be necessary to carry out the pur-
11 poses of this section.”.

12 (e) CLERICAL AMENDMENTS.—

13 (1) The table of sections for part IV of sub-
14 chapter A of chapter 11 of the Internal Revenue
15 Code of 1986 is amended by striking the item relat-
16 ing to section 2057 and by inserting after the item
17 relating to section 2058 the following new item:

“Sec. 2059. Exclusion for qualified family-owned business interests.”.

18 (2) The table of sections for part II of sub-
19 chapter O of chapter 1 of such Code is amended by
20 striking the item relating to section 1023 and insert-
21 ing the following new items:

“Sec. 1023. Treatment of qualified family-owned business interests and spousal
property.”.

“Sec. 1024. Cross references.”.

1 (f) EFFECTIVE DATES.—The amendments made by
2 this section shall apply to estates of decedents dying, and
3 gifts made—

4 (1) after December 31, 2005, and before Janu-
5 ary 1, 2010, and

6 (2) after December 31, 2011.

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