

105TH CONGRESS  
1ST SESSION

# H. R. 1583

To amend the Internal Revenue Code of 1986 to provide an exclusion from estate tax for family-owned businesses.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 13, 1997

Ms. HOOLEY of Oregon (for herself and Mr. COOKSEY) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to provide an exclusion from estate tax for family-owned businesses.

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 Pres-  
5       ervation Act”.

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

7       (a) IN GENERAL.—Part III of subchapter A of chap-  
8       ter 11 (relating to gross estate) is amended by inserting  
9       after section 2033 the following new section:

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

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

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

8 “(2) \$1,200,000.

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

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

12 “(A) the decedent was (at the date of the  
13 decedent’s death) a citizen or resident of the  
14 United States,

15 “(B) the sum of—

16 “(i) the adjusted value of the qualified  
17 family-owned business interests described  
18 in paragraph (2), plus

19 “(ii) the amount of the gifts of such  
20 interests determined under paragraph (3),  
21 exceeds 50 percent of the adjusted gross estate,  
22 and

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

1           “(i) such interests were owned by the  
2           decedent or a member of the decedent’s  
3           family, and

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

9           “(2) INCLUDIBLE QUALIFIED FAMILY-OWNED  
10          BUSINESS INTERESTS.—The qualified family-owned  
11          business interests described in this paragraph are  
12          the interests which—

13               “(A) are included in determining the value  
14               of the gross estate (without regard to this sec-  
15               tion), and

16               “(B) are acquired by any qualified heir  
17               from, or passed to any qualified heir from, the  
18               decedent (within the meaning of section  
19               2032A(e)(9)).

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

24               “(A) the sum of—

1           “(i) the amount of such gifts from the  
2           decedent to members of the decedent’s  
3           family taken into account under subsection  
4           2001(b)(1)(B), plus

5           “(ii) the amount of such gifts other-  
6           wise excluded under section 2503(b),  
7           to the extent such interests are continuously  
8           held by members of such family (other than the  
9           decedent’s spouse) between the date of the gift  
10          and the date of the decedent’s death, over

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

14          “(c) ADJUSTED GROSS ESTATE.—For purposes of  
15          this section, the term ‘adjusted gross estate’ means the  
16          value of the gross estate (determined without regard to  
17          this section)—

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

20                 “(2) increased by the excess of—

21                         “(A) the sum of—

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

24                                 “(ii) the amount (if more than de-  
25                                 minimis) of other transfers from the dece-

1 dent to the decedent's spouse (at the time  
2 of the transfer) within 10 years of the date  
3 of the decedent's death, plus

4 “(iii) the amount of other gifts (not  
5 included under clause (i) or (ii)) from the  
6 decedent within 3 years of such date, other  
7 than gifts to members of the decedent's  
8 family otherwise excluded under section  
9 2503(b), over

10 “(B) the sum of the amounts described in  
11 clauses (i), (ii), and (iii) of subparagraph (A)  
12 which are otherwise includible in the gross es-  
13 tate.

14 For purposes of the preceding sentence, the Secretary may  
15 provide that de minimis gifts to persons other than mem-  
16 bers of the decedent's family shall not be taken into ac-  
17 count.

18 “(d) ADJUSTED VALUE OF THE QUALIFIED FAMILY-  
19 OWNED BUSINESS INTERESTS.—For purposes of this sec-  
20 tion, the adjusted value of any qualified family-owned  
21 business interest is the value of such interest for purposes  
22 of this chapter (determined without regard to this sec-  
23 tion), reduced by the excess of—

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

1 “(2) the sum of—

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

5 “(B) any indebtedness to the extent the  
6 taxpayer establishes that the proceeds of such  
7 indebtedness were used for the payment of edu-  
8 cational and medical expenses of the decedent,  
9 the decedent’s spouse, or the decedent’s depend-  
10 ents (within the meaning of section 152), plus

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

14 “(e) QUALIFIED FAMILY-OWNED BUSINESS INTER-  
15 EST.—

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

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

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

23 “(i) at least—

24 “(I) 50 percent of such entity is  
25 owned (directly or indirectly) by the

1                   decedent and members of the dece-  
2                   dent’s family,

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

5                   “(III) 90 percent of such entity  
6                   is so owned by members of 3 families,  
7                   and

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

12                  “(2) LIMITATION.—Such term shall not in-  
13                  clude—

14                  “(A) any interest in a trade or business  
15                  the principal place of business of which is not  
16                  located in the United States,

17                  “(B) any interest in an entity, if the stock  
18                  or debt of such entity or a controlled group (as  
19                  defined in section 267(f)(1)) of which such en-  
20                  tity was a member was readily tradable on an  
21                  established securities market or secondary mar-  
22                  ket (as defined by the Secretary) at any time  
23                  within 3 years of the date of the decedent’s  
24                  death,

1           “(C) any interest in a trade or business  
2 not described in section 542(c)(2), if more than  
3 35 percent of the adjusted ordinary gross in-  
4 come of such trade or business for the taxable  
5 year which includes the date of the decedent’s  
6 death would qualify as personal holding com-  
7 pany income (as defined in section 543(a)),

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

10           “(i) cash or marketable securities, or  
11 both, in excess of the reasonably expected  
12 day-to-day working capital needs of such  
13 trade or business, and

14           “(ii) any other assets of the trade or  
15 business (other than assets used in the ac-  
16 tive conduct of a trade or business de-  
17 scribed in section 542(c)(2)), the income of  
18 which is described in section 543(a) or in  
19 subparagraph (B), (C), (D), or (E) of sec-  
20 tion 954(c)(1) (determined by substituting  
21 ‘trade or business’ for ‘controlled foreign  
22 corporation’).

23           “(3) RULES REGARDING OWNERSHIP.—

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

1           “(i) CORPORATIONS.—Ownership of a  
2           corporation shall be determined by the  
3           holding of stock possessing the appropriate  
4           percentage of the total combined voting  
5           power of all classes of stock entitled to vote  
6           and the appropriate percentage of the total  
7           value of shares of all classes of stock.

8           “(ii) PARTNERSHIPS.—Ownership of a  
9           partnership shall be determined by the  
10          owning of the appropriate percentage of  
11          the capital interest in such partnership.

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

19                 “(i) such ownership interest in the  
20                 other trade or business shall be dis-  
21                 regarded in determining if the ownership  
22                 interest in the first trade or business is a  
23                 qualified family-owned business interest,  
24                 and

1           “(ii) this section shall be applied sepa-  
2           rately in determining if such interest in  
3           any other trade or business is a qualified  
4           family-owned business interest.

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

14          “(f) TAX TREATMENT OF FAILURE TO MATERIALLY  
15 PARTICIPATE IN BUSINESS OR DISPOSITIONS OF INTER-  
16 ESTS.—

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

21                 “(A) the material participation require-  
22                 ments described in section 2032A(c)(6)(B) are  
23                 not met with respect to the qualified family-  
24                 owned business interest which was acquired (or  
25                 passed) from the decedent,

1           “(B) the qualified heir disposes of any por-  
2           tion of a qualified family-owned business inter-  
3           est (other than by a disposition to a member of  
4           the qualified heir’s family or through a qualified  
5           conservation contribution under section  
6           170(h)),

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

13          “(D) the principal place of business of a  
14          trade or business of the qualified family-owned  
15          business interest ceases to be located in the  
16          United States.

17          “(2) ADDITIONAL ESTATE TAX.—

18                 “(A) IN GENERAL.—The amount of the  
19                 additional estate tax imposed by paragraph (1)  
20                 shall be equal to—

21                         “(i) the applicable percentage of the  
22                         adjusted tax difference attributable to the  
23                         qualified family-owned business interest  
24                         (as determined under rules similar to the  
25                         rules of section 2032A(c)(2)(B)), plus

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

8           “(B) APPLICABLE PERCENTAGE.—For  
 9           purposes of this paragraph, the applicable per-  
 10          centage shall be determined under the following  
 11          table:

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

12          “(g) SECURITY REQUIREMENTS FOR NONCITIZEN  
 13 QUALIFIED HEIRS.—

14           “(1) IN GENERAL.—Except upon the applica-  
 15          tion of subparagraph (F) or (M) of subsection  
 16          (h)(3), if a qualified heir is not a citizen of the Unit-  
 17          ed States, any interest under this section passing to  
 18          or acquired by such heir (including any interest held  
 19          by such heir at a time described in subsection  
 20          (f)(1)(C)) shall be treated as a qualified family-

1 owned business interest only if the interest passes or  
2 is acquired (or is held) in a qualified trust.

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

5 “(A) which is organized under, and gov-  
6 erned by, the laws of the United States or a  
7 State, and

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

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

15 “(1) QUALIFIED HEIR.—The term ‘qualified  
16 heir’—

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

19 “(B) includes any active employee of the  
20 trade or business to which the qualified family-  
21 owned business interest relates if such employee  
22 has been employed by such trade or business  
23 for a period of at least 10 years before the date  
24 of the decedent’s death.

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

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

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

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

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

12                   “(D) Section 2032A(c)(3) (relating to only  
13                   1 additional tax imposed with respect to any 1  
14                   portion).

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

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

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

23                   “(H) Section 2032A(e)(10) (relating to  
24                   community property).

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

4           “(J) Section 2032A(f) (relating to statute  
5           of limitations).

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

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

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

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

17                 “(A) the dollar limitation applicable under  
18                 section 2032A(a)(2), and

19                 “(B) the \$1,000,000 amount under section  
20                 6601(j)(3) (as adjusted),

21          shall each be reduced (but not below zero) by the  
22          amount of such reduction.

23          “(i) INFLATION ADJUSTMENT OF EXCLUSION  
24          AMOUNT.—

1           “(1) IN GENERAL.—In the case of a taxable  
2 year beginning after December 31, 1998, the dollar  
3 amount in subsection (a)(2) shall be increased by an  
4 amount equal to—

5                   “(A) such dollar amount, multiplied by

6                   “(B) the cost-of-living adjustment deter-  
7 mined under section 1(f)(3) for the calendar  
8 year in which the taxable year begins, deter-  
9 mined by substituting ‘calendar year 1997’ for  
10 ‘calendar year 1992’ in subparagraph (B)  
11 thereof.

12           “(2) ROUNDING.—If any amount as adjusted  
13 under paragraph (1) is not a multiple of \$1,000  
14 such amount shall be rounded to the next lowest  
15 multiple of \$1,000.”

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, 1997.

○