

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5032

To amend the Internal Revenue Code of 1986 to reduce the rate of the estate tax imposed on family-owned business interests.

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IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 13, 1994

Mr. BREWSTER (for himself and Mr. McCRERY) 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 reduce the rate of the estate tax imposed on family-owned business interests.

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. REDUCED ESTATE TAX RATE ON FAMILY-OWNED**  
7       **BUSINESS INTERESTS.**

8       (a) IN GENERAL.—Part I of subchapter A of chapter  
9       11 of the Internal Revenue Code of 1986 (relating to tax

1 imposed) is amended by adding at the end the following  
2 new section:

3 **“SEC. 2003. REDUCED RATE ON FAMILY-OWNED BUSINESS**  
4 **INTERESTS.**

5 “(a) IN GENERAL.—In the case of an estate of a de-  
6 cedent to which this section applies, the tax imposed by  
7 section 2001 shall not exceed the sum of—

8 “(1) a tax computed at the rates and in the  
9 manner as if this section had not been enacted on  
10 the greater of—

11 “(A) the sum described in section  
12 2001(c)(1) reduced by the qualified family-  
13 owned business interests, or

14 “(B) the sum (if any) described in section  
15 2001(c)(1) taxed at a rate below the applicable  
16 rate, plus

17 “(2) a tax equal to the applicable rate of the  
18 portion of the taxable estate in excess of the amount  
19 determined under paragraph (1).

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

22 “(1) the decedent was (at the date of his death)  
23 a citizen or resident of the United States,

24 “(2) the sum of—

1           “(A) the value of the qualified family-  
2           owned business interests which are included in  
3           determining the gross estate and which are ac-  
4           quired from or passed from the decedent to a  
5           qualified heir of the decedent, and

6           “(B) the amount (taken into account  
7           under subsection 2001(b)(1)(B)) of the ad-  
8           justed taxable gifts of such interests to mem-  
9           bers of the decedent’s family,  
10          exceeds 50 percent of the adjusted gross estate, and

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

14               “(A) such interests were owned by the de-  
15               cedent or a member of the decedent’s family,  
16               and

17               “(B) there was material participation by  
18               the decedent or a member of the decedent’s  
19               family in the operation of the business to which  
20               such interests relate.

21          “(c) APPLICABLE RATE.—For purposes of this sec-  
22          tion, the applicable rate is—

23               “(1) 15 percent if the requirement of subsection  
24               (b)(3)(B) is met by a member of the decedent’s fam-  
25               ily, and

1 “(2) 20 percent in any other case.

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

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

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

9 “(B) an interest as a partner in a partner-  
10 ship carrying on a trade or business, if such  
11 partnership had 15 or fewer partners; or

12 “(C) stock in a corporation carrying on a  
13 trade or business if such corporation had not  
14 more than the number of shareholders specified  
15 in section 1361(b)(1)(A).

16 Such term shall not include any interest which is  
17 readily tradable on an established securities market  
18 or otherwise.

19 “(2) RULES FOR APPLYING PARAGRAPH (1).—  
20 For purposes of paragraph (1), rules similar to the  
21 rules of paragraphs (2), (3), (4), and (6) of section  
22 6166(b) shall apply.

23 “(e) RECAPTURE OF TAX BENEFIT IF INTERESTS  
24 NOT HELD FOR 10 YEARS.—

25 “(1) IN GENERAL.—If—

1           “(A) during the 10-year period beginning  
2 on the date of death of the decedent—

3                   “(i)(I) any portion of a qualified fam-  
4 ily-owned business interest is distributed,  
5 sold, exchanged, or otherwise disposed of,  
6 or

7                   “(II) money and other property at-  
8 tributable to such an interest is withdrawn  
9 from such trade or business, and

10           “(B) the aggregate of such distributions,  
11 sales, exchanges, or other dispositions and with-  
12 drawals equals or exceeds 20 percent of the  
13 value of such interest, or

14 there is hereby imposed an additional estate tax.

15           “(2) ADDITIONAL ESTATE TAX.—

16                   “(A) IN GENERAL.—The amount of the  
17 additional estate tax imposed by paragraph (1)  
18 shall be the applicable percentage of the excess  
19 of what would have been the estate tax liability  
20 but for subsection (a) over the adjusted estate  
21 tax liability.

22                   “(B) APPLICABLE PERCENTAGE.—For  
23 purposes of subparagraph (A), the term ‘appli-  
24 cable percentage’ means 100 percent reduced  
25 (but not below zero) by the product of—

1 “(i) 10 percentage points, and

2 “(ii) the number of years (if any)  
3 after the date of the decedent’s death  
4 which the year during which the additional  
5 estate tax is imposed by paragraph (1) is  
6 after the 1st year after the date of the de-  
7 cedent’s death.

8 “(C) ADJUSTED ESTATE TAX LIABILITY.—

9 For purposes of subparagraph (A), the term  
10 ‘adjusted estate tax liability’ means the estate  
11 tax liability increased by the amount (if any) of  
12 any prior additional estate tax imposed by sub-  
13 section (f).

14 “(D) ESTATE TAX LIABILITY.—For pur-  
15 poses of this paragraph, the term ‘estate tax li-  
16 ability’ means the tax imposed by section 2001  
17 reduced by the credits allowable against such  
18 tax.

19 “(3) CERTAIN RULES TO APPLY.—For purposes  
20 of this subsection, rules similar to the rules of sub-  
21 paragraphs (B), (C), and (D) of section 6166(g)(1)  
22 shall apply.

23 “(f) RECAPTURE OF PORTION OF TAX BENEFIT IF  
24 HEIRS CEASE TO MATERIALLY PARTICIPATE DURING 10  
25 YEARS AFTER DEATH.—

1 “(1) IN GENERAL.—If—

2 “(A) the applicable rate which applied  
3 under subsection (a) to the estate of the dece-  
4 dent was 15 percent,

5 “(B) at any time during the 10-year period  
6 beginning on the date of death of the decedent,  
7 no qualified heir materially participates in the  
8 operation of the business to which the qualified  
9 family-owned business interests relate, and

10 “(C) there is no recapture under sub-  
11 section (e) on or before the earliest date during  
12 such 10-year period that no qualified heir so  
13 materially participated,

14 there is hereby imposed an additional estate tax.

15 “(2) ADDITIONAL ESTATE TAX.—The amount  
16 of the additional estate tax imposed by paragraph  
17 (1) shall be the applicable percentage of the excess  
18 of what would have been the estate tax liability but  
19 for subsection (c)(1) over the estate tax liability.

20 “(3) DEFINITIONS.—For purposes of paragraph  
21 (2), the terms ‘applicable percentage’ and ‘estate tax  
22 liability’ have the meanings given to such terms by  
23 subsection (e).

24 “(g) OTHER DEFINITIONS.—For purposes of this  
25 section, the terms ‘qualified heir’ and ‘member of the fam-

1 ily' have the meanings given to such terms by section  
2 2032A(e).”

3 (b) CLERICAL AMENDMENT.—The table of sections  
4 for part I of subchapter A of chapter 11 of such Code  
5 is amended by adding at the end the following new item:

“Sec. 2003. Reduced rate on family-owned business interests.”

6 (c) EFFECTIVE DATE.—The amendments made by  
7 this section shall apply to estates of decedents dying after  
8 date of enactment.

9 **SEC. 3. LIMITATION ON 4 PERCENT RATE OF INTEREST ON**  
10 **ESTATE TAX EXTENDED UNDER SECTION 6166**  
11 **NOT TO APPLY TO ESTATE TAX ATTRIB-**  
12 **UTABLE TO QUALIFIED FAMILY-OWNED BUSI-**  
13 **NESS INTERESTS.**

14 (a) IN GENERAL.—Paragraph (2) of section 6601(j)  
15 of the Internal Revenue Code of 1986 (relating to 4-per-  
16 cent portion) is amended by adding at the end the follow-  
17 ing new flush sentence:

18 “Subparagraph (B) shall not take into account the  
19 amount of the tax imposed by chapter 11 which is  
20 attributable to qualified family-owned business inter-  
21 ests (as defined in section 2003(b)) unless an elec-  
22 tion is in effect under section 2032A with respect to  
23 the estate.”.

1 (b) EFFECTIVE DATE.—The amendment made by  
2 this section shall apply to estates of decedents dying after  
3 date of enactment.

4 **SEC. 4. EXTENSION OF ALTERNATE VALUATION DATE TO 40**  
5 **MONTHS WITH RESPECT TO ESTATE CON-**  
6 **SISTING LARGELY OF QUALIFIED FAMILY-**  
7 **OWNED BUSINESS INTERESTS.**

8 (a) IN GENERAL.—Section 2032 of the Internal Rev-  
9 enue Code of 1986 (relating to alternate valuation) is  
10 amended by redesignating subsections (d) and (e) as sub-  
11 sections (e) and (f), respectively, and by inserting after  
12 subsection (b) the following new subsection:

13 “(c) ESTATES LARGELY CONSISTING OF QUALIFIED  
14 FAMILY-OWNED BUSINESS INTERESTS.—In the case of  
15 an estate to which section 2003 applies—

16 “(1) subsection (a) shall be applied by sub-  
17 stituting ‘40 months’ for ‘6 months’ each place it  
18 appears, and

19 “(2) section 6075(a) (relating to time for filing  
20 estate tax return) shall be applied by substituting  
21 ‘43 months’ for ‘9 months’.”

22 (b) EFFECTIVE DATE.—The amendment made by  
23 this section shall apply to estates of decedents dying after  
24 date of enactment.

1 **SEC. 5. INCREASE IN GIFT TAX EXCLUSION.**

2 (a) IN GENERAL.—Subsection (b) of section 2503 of  
3 the Internal Revenue Code of 1986 (relating to taxable  
4 gifts) is amended by adding at the end the following new  
5 sentence: “In the case of gifts during a calendar year by  
6 a donor to ancestors or lineal descendants of the donor,  
7 the aggregate amount of such gifts which are not included  
8 in the total amount of gifts by reason of this subsection  
9 shall not be less than 15 percent of the donor’s earned  
10 income (as defined in section 32(c)(2)) for the taxable  
11 year ending with or within such calendar year.”

12 (b) EFFECTIVE DATE.—The amendment made by  
13 subsection (a) shall apply to gifts made in calendar years  
14 after date of enactment.

15 **SEC. 6. INCREASE IN UNIFIED ESTATE AND GIFT TAX**  
16 **CREDITS.**

17 (a) ESTATE TAX CREDIT.—

18 (1) Subsection (a) of section 2010 of the Inter-  
19 nal Revenue Code of 1986 (relating to unified credit  
20 against estate tax) is amended by striking  
21 “\$192,800” and inserting “the applicable credit  
22 amount”.

23 (2) Section 2010 of such Code is amended by  
24 redesignating subsection (c) as subsection (d) and by  
25 inserting after subsection (b) the following new sub-  
26 section:

1       “(c) APPLICABLE CREDIT AMOUNT.—For purposes  
2 of this section—

3           “(1) IN GENERAL.—The applicable credit  
4 amount is the amount of the tentative tax which  
5 would be determined under the rate schedule set  
6 forth in section 2001(c) if the amount with respect  
7 to which such tentative tax is to be computed were  
8 \$600,000.

9           “(2) COST-OF-LIVING ADJUSTMENTS.—In the  
10 case of any decedent dying in a calendar year after  
11 December 31, 1994, the \$600,000 amount set forth  
12 in paragraph (1) shall be increased by an amount  
13 equal to—

14                   “(A) \$600,000, multiplied by

15                   “(B) the cost-of-living adjustment deter-  
16 mined under section 1(f)(3) for such calendar  
17 year by substituting ‘calendar year 1995’ for  
18 ‘calendar year 1992’ in subparagraph (B)  
19 thereof.

20 Any increase determined under the preceding sen-  
21 tence shall be rounded to the nearest multiple of  
22 \$1,000.”

23           (3) Paragraph (1) of section 6018(a) of such  
24 Code is amended by striking “\$600,000” and insert-

1 ing “\$600,000 (adjusted as provided in section  
2 2010(c)(2)”.

3 (b) UNIFIED GIFT TAX CREDIT.—Paragraph (1) of  
4 section 2505(a) of such Code is amended by striking  
5 “\$192,800” and inserting “the applicable credit amount  
6 in effect under section 2010(c) for such calendar year”.

7 (c) EFFECTIVE DATE.—The amendments made by  
8 this section shall apply to the estates of decedents dying,  
9 and gifts made, after December 31, 1994.

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