

104TH CONGRESS  
1ST SESSION

# H. R. 2190

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.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 3, 1995

Mr. McCRERY (for himself, Ms. DUNN of Washington, Mr. BREWSTER, Mr. HERGER, Mr. PAYNE of Virginia, Mr. BUNNING of Kentucky, Mr. HANCOCK, Mr. CHRISTENSEN, Mr. LAUGHLIN, Mr. TAUZIN, Mrs. MEYERS of Kansas, Mr. CRAMER, Mr. ROBERTS, Mr. CONDIT, Mr. TAYLOR of North Carolina, Mr. HALL of Texas, Mr. BLUTE, Mr. BAKER of Louisiana, Mr. BAESLER, Mr. WELLER, Mr. PARKER, Mr. HASTINGS of Washington, Mr. HAYES, Mr. KNOLLENBERG, Mr. BROWDER, Mr. LEWIS of California, Ms. DANNER, Mr. HOSTETTLER, Mrs. LINCOLN, Mr. SOUDER, Mr. HUTCHINSON, Mr. JOHNSON of South Dakota, Mr. PETE GEREN of Texas, Mr. EWING, Mr. CANADY of Florida, Mr. BARRETT of Nebraska, Mr. LONGLEY, Mr. PETERSON of Minnesota, Mrs. SMITH of Washington, Mr. HOLDEN, Mr. LUCAS, Mr. TANNER, Mr. NETHERCUTT, Mr. LAHOOD, Mr. COOLEY, Mr. METCALF, Mr. ALLARD, Mr. ROSE, Mr. DICKEY, Mr. DEAL of Georgia, Mr. CHAMBLISS, Mr. WATTS of Oklahoma, Mr. MONTGOMERY, Mr. STENHOLM, Mr. HUNTER, Mr. LARGENT, Mr. ENSIGN, Mr. COBURN, Mr. COMBEST, Mr. DICKS, Mr. BILBRAY, Mr. POMBO, Mr. CRAPO, Mr. DOOLEY, Mr. OXLEY, Mr. BALLENGER, Mr. BARCIA of Michigan, Mr. LIVINGSTON, Mr. PORTMAN, Mr. BARTON of Texas, Mr. NUSSLE, Mr. CALLAHAN, Mr. EVERETT, Mr. KINGSTON, Mr. CALVERT, Mr. COLLINS of Georgia, Mr. KASICH, Mr. CHAPMAN, Mr. DOOLITTLE, Mr. FAZIO of California, Mr. SCHAEFER, Mr. TATE, and Mr. GOODLATTE) 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 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 Pro-  
5       tection Act of 1995”.

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  
9       gross estate) is amended by inserting after section 2033  
10      the following new section:

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

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

15              “(1) the adjusted value of the qualified family-  
16              owned business interests of the decedent otherwise  
17              includible in the estate, or

18              “(2) the sum of—

19                      “(A) \$1,500,000, plus

20                      “(B) 50 percent of the excess (if any) of  
21              the adjusted value of such interests over  
22              \$1,500,000.

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

1           “(1) the decedent was (at the date of the dece-  
2           dent’s death) a citizen or resident of the United  
3           States,

4           “(2) the sum of—

5                   “(A) the adjusted value of the qualified  
6                   family-owned business interests which—

7                           “(i) are included in determining the  
8                           value of the gross estate (without regard to  
9                           this section), and

10                           “(ii) are acquired by a qualified heir  
11                           from, or passed to a qualified heir from,  
12                           the decedent (within the meaning of sec-  
13                           tion 2032A(e)(9)), plus

14                   “(B) the amount of the adjusted taxable  
15                   gifts of such interests from the decedent to  
16                   members of the decedent’s family taken into ac-  
17                   count under subsection 2001(b)(1)(B),  
18           exceeds 50 percent of the adjusted gross estate, and

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

22                   “(A) such interests were owned by the de-  
23                   cedent or a member of the decedent’s family,  
24                   and

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

6           “(c) ADJUSTED GROSS ESTATE.—For purposes of  
7 this section, the term ‘adjusted gross estate’ means the  
8 value of the gross estate (determined without regard to  
9 this section)—

10           “(1) reduced by any amount deductible under  
11 section 2053(a)(4), and

12           “(2) increased by the sum of—

13           “(A) the amount taken into account under  
14 subsection (b)(2)(B), plus

15           “(B) the amount of other gifts from the  
16 decedent to the decedent’s spouse (at the time  
17 of the gift) within 10 years of the date of the  
18 decedent’s death, plus

19           “(C) the amount of other gifts (not in-  
20 cluded under subparagraph (A) or (B)) from  
21 the decedent within 3 years of such date.

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

1 of this chapter (determined without regard to this sec-  
2 tion), reduced by the excess of—

3 “(1) any amount deductible under section  
4 2053(a)(4), over

5 “(2) the sum of—

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

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

15 “(C) any indebtedness not described in  
16 subparagraph (A) or (B), to the extent such in-  
17 debtedness does not exceed \$10,000.

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

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

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

1           “(B) an interest as a partner in a partner-  
2           ship, or stock in a corporation, carrying on a  
3           trade or business, if—

4                   “(i) at least—

5                           “(I) 50 percent of such partner-  
6                           ship or corporation is owned (directly  
7                           or indirectly) by the decedent or mem-  
8                           bers of the decedent’s family,

9                           “(II) 70 percent of such partner-  
10                           ship or corporation is so owned by 2  
11                           families (including the decedent’s fam-  
12                           ily), or

13                           “(III) 90 percent of such part-  
14                           nership or corporation is so owned by  
15                           3 families (including the decedent’s  
16                           family), and

17                           “(ii) at least 30 percent of such part-  
18                           nership or corporation is so owned by each  
19                           family described in subclause (II) or (III)  
20                           of clause (i).

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

23                   “(A) any interest in a trade or business  
24                   the principal place of business of which is not  
25                   located in the United States,

1 “(B) any interest in—

2 “(i) an entity which had, or

3 “(ii) an entity which is a member of  
4 a controlled group (as defined in section  
5 267(f)(1)) which had,

6 readily tradable stock or debt on an established  
7 securities market or secondary market (as de-  
8 fined by the Secretary) within 3 years of the  
9 date of the decedent’s death,

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

17 “(D) that portion of an interest in a trade  
18 or business that is attributable to cash or mar-  
19 ketable securities, or both, in excess of the rea-  
20 sonably expected day-to-day working capital  
21 needs of such trade or business.

22 “(3) OWNERSHIP RULES.—

23 “(A) INDIRECT OWNERSHIP.—For pur-  
24 poses of determining indirect ownership under  
25 paragraph (1), rules similar to the rules of

1 paragraphs (2) and (3) of section 447(e) shall  
2 apply.

3 “(B) TIERED ENTITIES.—For purposes of  
4 this section, if—

5 “(i) a qualified family-owned business  
6 holds an interest in another trade or busi-  
7 ness, and

8 “(ii) such interest would be a qualified  
9 family-owned business interest if held di-  
10 rectly by the family (or families) holding  
11 interests in the qualified family-owned  
12 business meeting the requirements of para-  
13 graph (1)(B),

14 then the value of the qualified family-owned  
15 business shall include the portion attributable  
16 to the interest in the other trade or business.

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

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

24 “(A) the qualified heir ceases to use for  
25 the qualified use (within the meaning of section

1           2032A(c)(6)(B)) the qualified family-owned  
2           business interest which was acquired (or  
3           passed) from the decedent, or

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

10          “(2) ADDITIONAL ESTATE TAX.—The amount  
11          of the additional estate tax imposed by paragraph  
12          (1) shall be equal to—

13                 “(A) the applicable percentage of adjusted  
14                 tax difference attributable to the qualified fam-  
15                 ily-owned business interest (as determined  
16                 under rules similar to the rules of section  
17                 2032A(c)(2)(B)), plus

18                 “(B) interest on the amount determined  
19                 under subparagraph (A) at the annual rate of  
20                 4 percent for the period beginning on the date  
21                 the estate tax liability was due under this chap-  
22                 ter and ending on the date such additional es-  
23                 tate tax is due.

24          “(3) APPLICABLE PERCENTAGE.—For purposes  
25          of paragraph (2), the term ‘applicable percentage’

1 means the percentage determined in accordance with  
 2 the following table for the year (in the 10-year pe-  
 3 riod referred to in paragraph (1)) in which the re-  
 4 capture event occurs:

<b>In the case of the:</b>	<b>The applicable percentage is:</b>
First 5 such years .....	100 percent
6th such year .....	50 percent
7th such year .....	40 percent
8th such year .....	30 percent
9th such year .....	20 percent
10th such year .....	10 percent.

5 “(g) OTHER DEFINITIONS AND APPLICABLE  
 6 RULES.—For purposes of this section—

7 “(1) QUALIFIED HEIR.—The term ‘qualified  
 8 heir’—

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

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

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

20 “(3) INFLATION ADJUSTMENT.—In the case of  
 21 estates of decedents dying in a calendar year after  
 22 1996, the \$1,500,000 amount contained in sub-

1 section (a) shall be increased each place it appears  
2 by an amount equal to—

3 “(A) \$1,500,000, multiplied by

4 “(B) the cost-of-living adjustment deter-  
5 mined under section 1(f)(3) for such calendar  
6 year by substituting ‘calendar year 1995’ for  
7 ‘calendar year 1992’ in subparagraph (B)  
8 thereof.

9 If any amount as adjusted under the preceding sen-  
10 tence is not a multiple of \$10,000, such amount  
11 shall be rounded to the nearest multiple of \$10,000.

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

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

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

18 “(C) Section 2032A(c)(2)(D) (relating to  
19 partial dispositions).

20 “(D) Section 2032A(c)(3) (relating to only  
21 1 additional tax imposed with respect to any 1  
22 portion).

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

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

3           “(G) Section 2032A(c)(7) (relating to no  
4           tax if use begins within 2 years; active manage-  
5           ment by eligible qualified heir treatment as ma-  
6           terial participation).

7           “(H) Section 2032A(e)(10) (relating to  
8           community property).

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

12          “(J) Section 2032A(f) (relating to statute  
13          of limitations).

14          “(K) Section 6166(b)(3) (relating to farm-  
15          houses and certain other structures taken into  
16          account).

17          “(L) Subparagraphs (B), (C), and (D) of  
18          section 6166(g)(1) (relating to acceleration of  
19          payment).”

20          (b) CLERICAL AMENDMENT.—The table of sections  
21          for part III of subchapter A of chapter 11 of the Internal  
22          Revenue Code of 1986 is amended by inserting after the  
23          item relating to section 2033 the following new item:

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

1       (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to estates of decedents dying after  
3 December 31, 1995.

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