

115TH CONGRESS
1ST SESSION

H. R. 3159

To amend the Internal Revenue Code of 1986 to reduce the taxable estate by the value of certain family-owned business interests.

IN THE HOUSE OF REPRESENTATIVES

JUNE 29, 2017

Mr. THOMPSON of California 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 reduce the taxable estate by the value of certain 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 Estate Tax Act”.

6 **SEC. 2. TAXABLE ESTATE REDUCED BY VALUE OF CERTAIN**
7 **FAMILY-OWNED BUSINESS INTERESTS.**

8 (a) IN GENERAL.—Part IV of subchapter A of chap-
9 ter 11 of the Internal Revenue Code of 1986 is amended
10 by inserting after section 2056A the following new section:

1 **“SEC. 2057. FAMILY-OWNED BUSINESS INTERESTS.**

2 “(a) GENERAL RULE.—

3 “(1) ALLOWANCE OF DEDUCTION.—For pur-
4 poses of the tax imposed by section 2001, in the
5 case of an estate of a decedent to which this section
6 applies, the value of the taxable estate shall be de-
7 termined by deducting from the value of the gross
8 estate the adjusted value of the qualified family-
9 owned business interests of the decedent which are
10 described in subsection (b)(2).

11 “(2) MAXIMUM DEDUCTION.—The deduction al-
12 lowed by this section shall not exceed the greater
13 of—

14 “(A) the basic exclusion amount in effect
15 under section 2010(c)(3) for the calendar year
16 which includes the date of the death of the de-
17 cedent, or

18 “(B) the value of any qualified farmland
19 which constitutes the qualified family-owned
20 business interest (in the case of an entity de-
21 scribed in subsection (e)(1)(B), qualified farm-
22 land held by such entity shall be treated as con-
23 stituting a qualified family-owned business in-
24 terest in the same proportion as the decedent’s
25 ownership interest in such entity).

1 “(3) QUALIFIED FARMLAND.—For purposes of
2 paragraph (2)(B), the term ‘qualified farmland’
3 means qualified real property as defined in section
4 2032A(b) applied without regard to paragraph
5 (2)(B) thereof.

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

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

9 “(A) the decedent was (at the date of the
10 decedent’s death) a citizen or resident of the
11 United States,

12 “(B) the executor elects the application of
13 this section and files the agreement referred to
14 in subsection (h),

15 “(C) 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 “(D) during the 8-year period ending on
24 the date of the decedent’s death there have

1 been periods aggregating 5 years or more dur-
2 ing which—

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

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

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

15 “(A) are included in determining the value
16 of the gross estate, and

17 “(B) are acquired by any qualified heir
18 from, or passed to any qualified heir from, the
19 decedent (within the meaning of section
20 2032A(e)(9)).

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

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

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

11 “(c) ADJUSTED GROSS ESTATE.—For purposes of
12 this section, the term ‘adjusted gross estate’ means the
13 value of the gross estate—

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

16 “(2) increased by the excess of—

17 “(A) the sum of—

18 “(i) the amount of gifts determined
19 under subsection (b)(3), plus

20 “(ii) the amount (if more than de
21 minimis) of other transfers from the dece-
22 dent to the decedent’s spouse (at the time
23 of the transfer) within 10 years of the date
24 of the decedent’s death, plus

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

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

11 For purposes of the preceding sentence, the Sec-
12 retary may provide that de minimis gifts to persons
13 other than members of the decedent’s family shall
14 not be taken into account.

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

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

23 “(2) the sum of—

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

4 “(B) any indebtedness to the extent the
5 taxpayer establishes that the proceeds of such
6 indebtedness were used for the payment of edu-
7 cational and medical expenses of the decedent,
8 the decedent’s spouse, or the decedent’s depend-
9 ents (within the meaning of section 152, deter-
10 mined without regard to subsections (b)(1),
11 (b)(2), and (d)(1)(B) thereof), plus

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

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

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

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

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

24 “(i) at least—

1 “(I) 50 percent of such entity is
2 owned (directly or indirectly) by the
3 decedent and members of the dece-
4 dent’s family,

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

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

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

14 For purposes of the preceding sentence, a dece-
15 dent shall be treated as engaged in a trade or
16 business if any member of the decedent’s family
17 is engaged in such trade or business.

18 “(2) LIMITATION.—Such term shall not in-
19 clude—

20 “(A) any interest in a trade or business
21 the principal place of business of which is not
22 located in the United States,

23 “(B) any interest in an entity, if the stock
24 or debt of such entity or a controlled group (as
25 defined in section 267(f)(1)) of which such enti-

1 ty was a member was readily tradable on an es-
2 tablished securities market or secondary market
3 (as defined by the Secretary) at any time within
4 3 years of the date of the decedent's death,

5 “(C) any interest in a trade or business
6 not described in section 542(c)(2), if more than
7 35 percent of the adjusted ordinary gross in-
8 come of such trade or business for the taxable
9 year which includes the date of the decedent's
10 death would qualify as personal holding com-
11 pany income (as defined in section 543(a) with-
12 out regard to paragraph (2)(B) thereof) if such
13 trade or business were a corporation, and

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

16 “(i) cash or marketable securities, or
17 both, in excess of the reasonably expected
18 day-to-day working capital needs of such
19 trade or business, and

20 “(ii) any other assets of the trade or
21 business (other than assets used in the ac-
22 tive conduct of a trade or business de-
23 scribed in section 542(c)(2)), which
24 produce, or are held for the production of,
25 personal holding company income (as de-

1 fined in subparagraph (C)) or income de-
2 scribed in section 954(c)(1) (determined
3 without regard to subparagraph (A) there-
4 of and by substituting ‘trade or business’
5 for ‘controlled foreign corporation’).

6 In the case of a lease of property on a net cash
7 basis by the decedent to a member of the dece-
8 dent’s family, income from such lease shall not
9 be treated as personal holding company income
10 for purposes of subparagraph (C), and such
11 property shall not be treated as an asset de-
12 scribed in subparagraph (D)(ii), if such income
13 and property would not be so treated if the les-
14 sor had engaged directly in the activities en-
15 gaged in by the lessee with respect to such
16 property.

17 “(3) RULES REGARDING OWNERSHIP.—

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

20 “(i) CORPORATIONS.—Ownership of a
21 corporation shall be determined by the
22 holding of stock possessing the appropriate
23 percentage of the total combined voting
24 power of all classes of stock entitled to vote

1 and the appropriate percentage of the total
2 value of shares of all classes of stock.

3 “(ii) PARTNERSHIPS.—Ownership of a
4 partnership shall be determined by the
5 owning of the appropriate percentage of
6 the capital interest in such partnership.

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

14 “(i) such ownership interest in the
15 other trade or business shall be dis-
16 regarded in determining if the ownership
17 interest in the first trade or business is a
18 qualified family-owned business interest,
19 and

20 “(ii) this section shall be applied sepa-
21 rately in determining if such interest in
22 any other trade or business is a qualified
23 family-owned business interest.

24 “(C) INDIVIDUAL OWNERSHIP RULES.—
25 For purposes of this section, an interest owned,

1 directly or indirectly, by or for an entity de-
2 scribed in paragraph (1)(B) shall be considered
3 as being owned proportionately by or for the en-
4 tity's shareholders, partners, or beneficiaries. A
5 person shall be treated as a beneficiary of any
6 trust only if such person has a present interest
7 in such trust.

8 “(f) TAX TREATMENT OF FAILURE TO MATERIALLY
9 PARTICIPATE IN BUSINESS OR DISPOSITIONS OF INTER-
10 ESTS.—

11 “(1) IN GENERAL.—There is imposed an addi-
12 tional estate tax if, within 10 years after the date
13 of the decedent's death and before the date of the
14 qualified heir's death—

15 “(A) the material participation require-
16 ments described in section 2032A(c)(6)(B) are
17 not met with respect to the qualified family-
18 owned business interest which was acquired (or
19 passed) from the decedent,

20 “(B) the qualified heir disposes of any por-
21 tion of a qualified family-owned business inter-
22 est (other than by a disposition to a member of
23 the qualified heir's family or through a qualified
24 conservation contribution under section
25 170(h)),

1 “(C) the qualified heir loses United States
2 citizenship (within the meaning of section 877)
3 or with respect to whom an event described in
4 section 877(e)(1) occurs, and such heir does not
5 comply with the requirements of subsection (g),
6 or

7 “(D) the principal place of business of a
8 trade or business of the qualified family-owned
9 business interest ceases to be located in the
10 United States.

11 “(2) ADDITIONAL ESTATE TAX.—

12 “(A) IN GENERAL.—The amount of the
13 additional estate tax imposed by paragraph (1)
14 shall be equal to—

15 “(i) the applicable percentage of the
16 adjusted tax difference attributable to the
17 qualified family-owned business interest,
18 plus

19 “(ii) interest on the amount deter-
20 mined under clause (i) at the under-
21 payment rate established under section
22 6621 for the period beginning on the date
23 the estate tax liability was due under this
24 chapter and ending on the date such addi-
25 tional estate tax is due.

1 “(B) APPLICABLE PERCENTAGE.—For
 2 purposes of this paragraph, the applicable per-
 3 centage shall be determined under the following
 4 table:

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

5 “(C) ADJUSTED TAX DIFFERENCE.—For
 6 purposes of subparagraph (A)—

7 “(i) IN GENERAL.—The adjusted tax
 8 difference attributable to a qualified fam-
 9 ily-owned business interest is the amount
 10 which bears the same ratio to the adjusted
 11 tax difference with respect to the estate
 12 (determined under clause (ii)) as the value
 13 of such interest bears to the value of all
 14 qualified family-owned business interests
 15 described in subsection (b)(2).

16 “(ii) ADJUSTED TAX DIFFERENCE
 17 WITH RESPECT TO THE ESTATE.—For
 18 purposes of clause (i), the term ‘adjusted
 19 tax difference with respect to the estate’
 20 means the excess of what would have been
 21 the estate tax liability but for the election

1 under this section over the estate tax liabil-
2 ity. For purposes of this clause, the term
3 ‘estate tax liability’ means the tax imposed
4 by section 2001 reduced by the credits al-
5 lowable against such tax.

6 “(3) USE IN TRADE OR BUSINESS BY FAMILY
7 MEMBERS.—A qualified heir shall not be treated as
8 disposing of an interest described in subsection
9 (e)(1)(A) by reason of ceasing to be engaged in a
10 trade or business so long as the property to which
11 such interest relates is used in a trade or business
12 by any member of such individual’s family.

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

15 “(1) IN GENERAL.—Except upon the applica-
16 tion of subparagraph (F) of subsection (i)(3), if a
17 qualified heir is not a citizen of the United States,
18 any interest under this section passing to or ac-
19 quired by such heir (including any interest held by
20 such heir at a time described in subsection (f)(1)(C))
21 shall be treated as a qualified family-owned business
22 interest only if the interest passes or is acquired (or
23 is held) in a qualified trust.

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

1 “(A) which is organized under, and gov-
2 erned by, the laws of the United States or a
3 State, and

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

9 “(h) AGREEMENT.—The agreement referred to in
10 this subsection is a written agreement signed by each per-
11 son in being who has an interest (whether or not in posses-
12 sion) in any property designated in such agreement con-
13 sisting to the application of subsection (f) with respect
14 to such property.

15 “(i) OTHER DEFINITIONS AND APPLICABLE
16 RULES.—For purposes of this section—

17 “(1) QUALIFIED HEIR.—The term ‘qualified
18 heir’—

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

21 “(B) includes any active employee of the
22 trade or business to which the qualified family-
23 owned business interest relates if such employee
24 has been employed by such trade or business

1 for a period of at least 10 years before the date
2 of the decedent's death.

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

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

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

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

12 “(C) Section 2032A(c)(2)(D) (relating to
13 partial dispositions).

14 “(D) Section 2032A(c)(3) (relating to only
15 1 additional tax imposed with respect to any 1
16 portion).

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

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

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

1 “(H) Section 2032A(d) (relating to elec-
2 tion; agreement).

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

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

8 “(K) Section 2032A(f) (relating to statute
9 of limitations).

10 “(L) Section 2032A(g) (relating to appli-
11 cation to interests in partnerships, corporations,
12 and trusts).

13 “(M) Subsections (h) and (i) of section
14 2032A.

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

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

21 “(P) Section 6324B (relating to special
22 lien for additional estate tax).”.

23 (b) CONFORMING AMENDMENTS.—

24 (1) Section 2031(c)(10) of such Code is amend-
25 ed by striking “(as in effect before its repeal)”.

1 (2) The table of sections for part IV of sub-
2 chapter A of chapter 11 of such Code is amended by
3 inserting after the item relating to section 2056A
4 the following new item:

 “Sec. 2057. Family-owned business interests.”.

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

○