

112TH CONGRESS  
1ST SESSION

# H. R. 390

To amend the Internal Revenue Code of 1986 to provide an exclusion from the gross estate for certain farmlands and lands subject to qualified conservation easements, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 20, 2011

Mr. THOMPSON of California 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 the gross estate for certain farmlands and lands subject to qualified conservation easements, 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 Farm Preser-  
5       vation and Conservation Estate Tax Act”.

1 **SEC. 2. EXCLUSION FROM GROSS ESTATE FOR CERTAIN**  
2 **FARMLAND SO LONG AS FARMLAND USE**  
3 **CONTINUES.**

4 (a) IN GENERAL.—Part III of subchapter A of chap-  
5 ter 11 of the Internal Revenue Code of 1986 (relating to  
6 gross estate) is amended by inserting after section 2033  
7 the following new section:

8 **“SEC. 2033A. EXCLUSION OF CERTAIN FARMLAND SO LONG**  
9 **AS USE AS FARMLAND CONTINUES.**

10 “(a) IN GENERAL.—In the case of an estate of a de-  
11 cedent to which this section applies, if the executor makes  
12 the election described in subsection (f), the value of the  
13 gross estate shall not include the adjusted value of quali-  
14 fied farmland included in the estate.

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

17 “(1) the decedent was (at the date of the dece-  
18 dent’s death) a citizen or resident of the United  
19 States, and

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

23 “(A) the qualified farmland was owned by  
24 the decedent or a member of the decedent’s  
25 family, 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 such farmland, except  
5           that ‘material participation’ shall also include  
6           any rental of real estate and related property  
7           between the estate of the decedent or any suc-  
8           cessor thereto and any tenant so long as the  
9           tenant uses the real estate and related property  
10          to produce agricultural or horticultural com-  
11          modities, including livestock, bees, poultry, or-  
12          chards and woodlands, timber and fur-bearing  
13          animals and wildlife, on such farmland.

14          Rules similar to the rules of paragraphs (4) and (5)  
15          of section 2032A(b) shall apply for purposes of sub-  
16          paragraph (B).

17          “(c) DEFINITIONS AND SPECIAL RULE.—For pur-  
18          poses of this section—

19                 “(1) QUALIFIED FARMLAND.—The term ‘quali-  
20                 fied farmland’ means any real property—

21                         “(A) which is located in the United States,

22                         “(B) which is used as a farm for farming  
23                         purposes, and

24                         “(C) which was acquired from or passed  
25                         from the decedent to a qualified heir of the de-

1           cedent and which, on the date of the decedent's  
2           death, was being so used by the decedent or a  
3           member of the decedent's family.

4           “(2) MEMBER OF FAMILY.—A member of a  
5           family, with respect to any individual, means—

6                   “(A) a member of the family (as defined  
7                   by section 2031A(e)(2)), and

8                   “(B) includes—

9                           “(i) a lineal descendant of any spouse  
10                           described in subparagraph (D) of section  
11                           2032A(e)(2),

12                           “(ii) a lineal descendant of a sibling of  
13                           a parent of such individual,

14                           “(iii) a spouse of any lineal descend-  
15                           ant described in clause (ii), and

16                           “(iv) a lineal descendant of a spouse  
17                           described in clause (iii).

18           “(3) ADJUSTED VALUE.—The term ‘adjusted  
19           value’ means the value of farmland for purposes of  
20           this chapter (determined without regard to this sec-  
21           tion), reduced by the amount deductible under para-  
22           graph (3) or (4) of section 2053(a).

23           “(4) OTHER TERMS.—Any other term used in  
24           this section which is also used in section 2032A shall

1 have the same meaning given such term by section  
2 2032A.

3 “(d) TAX TREATMENT OF DISPOSITIONS AND FAIL-  
4 URES TO USE FOR FARMING PURPOSES.—

5 “(1) IMPOSITION OF RECAPTURE TAX.—If, at  
6 any time after the decedent’s death—

7 “(A) the qualified heir disposes of any in-  
8 terest in qualified farmland (other than by a  
9 disposition to a member of his family), or

10 “(B) the qualified heir ceases to use the  
11 real property which was acquired (or passed)  
12 from the decedent as a farm for farming pur-  
13 poses,

14 then there is hereby imposed a recapture tax on  
15 such disposition or cessation of use.

16 “(2) AMOUNT OF RECAPTURE TAX.—The  
17 amount of the tax imposed by paragraph (1) shall  
18 be the excess of—

19 “(A) the tax which would have been im-  
20 posed by section 2001 on the estate of the dece-  
21 dent but determined as if such estate included  
22 the interest in qualified farmland described in  
23 paragraph (1) which was so disposed of or  
24 ceased to be so used, reduced by the credits al-  
25 lowable against such tax, over

1           “(B) the tax imposed by section 2001 on  
2           the estate of the decedent, reduced by such  
3           credits.

4           For purposes of this paragraph, the value of the in-  
5           terest in qualified farmland specified in subpara-  
6           graph (A) shall be the adjusted value of such inter-  
7           est as of the date of the disposition or cessation of  
8           such interest described in paragraph (1).

9           “(3) REGULATIONS.—The Secretary may pre-  
10          scribe such regulations as may be necessary or ap-  
11          propriate to carry out this subsection, including reg-  
12          ulations requiring record keeping and information  
13          reporting, except that the Secretary may not impose  
14          a lien on the estate of the decedent or qualified  
15          farmland for such purposes.

16          “(e) APPLICATION OF OTHER RULES.—Rules similar  
17          to the rules of subsections (e) (other than paragraph (13))  
18          thereof), (f), (g), (h), and (i) of section 2032A shall apply  
19          for purposes of this section.

20          “(f) ELECTION.—The election under this subsection  
21          shall be made on or before the due date (including exten-  
22          sions) for filing the return of tax imposed by section 2001  
23          and shall be made on such return.”.

24          (b) CLERICAL AMENDMENT.—The table of sections  
25          for part III of subchapter A of chapter 11 of such Code

1 is amended by inserting after the item relating to section  
2 2033 the following new item:

“Sec. 2033A. Exclusion of certain farmland so long as use as farmland continues.”.

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

6 **SEC. 3. TEMPORARY EXCLUSION OF QUALIFIED CONSERVA-**  
7 **TION EASEMENTS.**

8 (a) **IN GENERAL.**—Part III of subchapter A of chap-  
9 ter 11 of the Internal Revenue Code of 1986 (relating to  
10 gross estate), as amended by section 2, is amended by in-  
11 serting after section 2033A the following new section:

12 **“SEC. 2033B. TEMPORARY EXCLUSION OF QUALIFIED CON-**  
13 **SERVATION EASEMENTS.**

14 “(a) **IN GENERAL.**—In the case of an estate of a de-  
15 cedent to which this section applies, if the executor makes  
16 the election described in subsection (d)—

17 “(1) the value of the gross estate shall not in-  
18 clude the value of land subject to a qualified con-  
19 servation easement included in the estate, but

20 “(2) a tax under subsection (b) shall apply.

21 “(b) **TAX TREATMENT OF DISPOSITIONS AND FOR**  
22 **USE INCOMPATIBLE WITH CONSERVATION EASEMENT.**—

23 “(1) **IMPOSITION OF RECAPTURE TAX.**—If, at  
24 any time after the decedent’s death—

1           “(A) the qualified heir disposes of any in-  
2           terest in the land described in subsection (a)(1)  
3           (other than by a disposition to a member of his  
4           family), or

5           “(B) the qualified heir uses any portion of  
6           the land described in subsection (a)(1) in a  
7           manner which violates the terms of such ease-  
8           ment,

9           then there is hereby imposed a recapture tax on  
10          such disposition or use.

11          “(2) AMOUNT OF RECAPTURE TAX.—The  
12          amount of the tax imposed by paragraph (1) shall  
13          be the excess of—

14               “(A) the tax which would have been im-  
15               posed by section 2001 on the estate of the dece-  
16               dent, determined as if—

17                       “(i) section 2031(c) did not apply,  
18                       and

19                       “(ii) as if such estate included the in-  
20                       terest described in paragraph (1)(A) or the  
21                       portion described in paragraph (1)(B), as  
22                       applicable,

23               reduced by the credits allowable against such  
24               tax, over



1           “(B) the tax imposed by section 2001 on  
2           the estate of the decedent, reduced by such  
3           credits.

4           For purposes of this paragraph, the value of any in-  
5           terest in land or portion of land subject to a quali-  
6           fied conservation easement shall be the fair market  
7           value of such interest or portion as of the date of  
8           the disposition or use of such interest or portion de-  
9           scribed in paragraph (1).

10           “(3) REGULATIONS.—The Secretary may pre-  
11           scribe such regulations as may be necessary or ap-  
12           propriate to carry out this subsection, including reg-  
13           ulations requiring record keeping and information  
14           reporting, except that the Secretary may not impose  
15           a lien on the estate of the decedent, land subject to  
16           a qualified conservation easement, or qualified con-  
17           servation easement for such purposes.

18           “(c) LAND SUBJECT TO QUALIFIED CONSERVATION  
19 EASEMENT.—For purposes of this section, the terms ‘land  
20 subject to a qualified conservation easement’ and ‘quali-  
21 fied conservation easement’ have the meanings given such  
22 terms by section 2031(c)(8).

23           “(d) ELECTION.—The election under this subsection  
24 shall be made on or before the due date (including exten-

1 sions) for filing the return of tax imposed by section 2001  
2 and shall be made on such return.”.

3 (b) CLERICAL AMENDMENT.—The table of sections  
4 for subchapter B of chapter 62 of such Code is amended  
5 by adding at the end the following new item:

“Sec. 2033B. Temporary exclusion of qualified conservation easements.”.

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

9 **SEC. 4. MODIFICATION OF DEFINITION OF QUALIFIED CON-**  
10 **SERVATION EASEMENT.**

11 (a) IN GENERAL.—Subparagraph (B) of section  
12 2031(c)(8) of the Internal Revenue Code of 1986 is  
13 amended by striking “and the restriction on the use of  
14 such interest described in section 170(h)(2)(C) shall in-  
15 clude a prohibition on more than a de minimis use for  
16 a commercial recreational activity”.

17 (b) EFFECTIVE DATE.—The amendments made by  
18 this section shall apply to estates of decedents dying after  
19 the date of the enactment of this Act.

20 **SEC. 5. MODIFICATION OF RULES RELATING TO VALU-**  
21 **ATION OF CERTAIN FARM, ETC., REAL PROP-**  
22 **ERTY.**

23 (a) DISPOSITION OF INTEREST SUBJECT TO QUALI-  
24 FIED CONSERVATION EASEMENT.—Subparagraph (A) of  
25 section 2032A(c)(1) of the Internal Revenue Code of 1986

1 is amended by striking “family)” and inserting “family  
2 or by a disposition to any other person when such interest  
3 in real property is subject to a qualified conservation ease-  
4 ment (as defined in section 2031(c)(8)(B))”.

5 (b) WOODLANDS SUBJECT TO MANAGEMENT  
6 PLAN.—Paragraph (2) of section 2032A(c) of such Code  
7 is amended by adding at the end the following new sub-  
8 paragraph:

9 “(F) EXCEPTION FOR WOODLANDS SUB-  
10 JECT TO MANAGEMENT PLAN.—Subparagraph  
11 (E) shall not apply to any disposition or sever-  
12 ance of standing timber on a qualified woodland  
13 that is made pursuant to—

14 “(i) a written forest management plan  
15 developed by a credentialed professional  
16 forester,

17 “(ii) a written forest management  
18 plan that is equivalent to a forest steward-  
19 ship plan, or

20 “(iii) a third-party audited forest cer-  
21 tification system or similar land manage-  
22 ment protocol.”.

23 (c) SALE OF CONSERVATION EASEMENT NOT A DIS-  
24 POSITION.—Paragraph (8) of section 2032A(c) of such  
25 Code is amended—

1           (1) by striking “A qualified” and inserting  
2           “Neither a qualified”, and

3           (2) by inserting “nor a sale of a conservation  
4           easement limiting the use of qualified real property”  
5           after “otherwise”.

6           (d) FARM DEFINED.—Paragraph (4) of section  
7           2032A(e) of such Code is amended by striking “orchards  
8           and woodlands” and inserting “orchards, woodlands, and  
9           properties managed to provide habitat in support of fish  
10          and wildlife dependent recreation”.

11          (e) FARMING PURPOSE DEFINED.—Paragraph (5) of  
12          section 2032A(e) of such Code is amended—

13               (1) in subparagraph (A) by inserting “, silvicultural,” after “agricultural”, and

14               (2) by striking “and” at the end of subpara-  
15               graph (B), by striking the period at the end of sub-  
16               paragraph (C) and inserting “, and”, and by adding  
17               at the end the following:  
18               

19                       “(D) creating, restoring, enhancing, or  
20                       maintaining habitat for the purpose of gener-  
21                       ating revenue from nature-oriented recreational  
22                       opportunities, including hunting, fishing, wild-  
23                       life observation, and related fish and wildlife de-  
24                       pendent recreation.”.

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

○