

111TH CONGRESS  
1ST SESSION

# H. R. 1328

To amend the Internal Revenue Code of 1986 to allow an unlimited exclusion from transfer taxes for certain farmland and land of conservation value, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 2009

Mr. BISHOP of New York (for himself, Mr. HINCHEY, and Mrs. MALONEY) 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 an unlimited exclusion from transfer taxes for certain farmland and land of conservation value, 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 “Farmland Preservation  
5 and Land Conservation Act of 2009”.

6 **SEC. 2. TRANSFER TAX EXCLUSION FOR CERTAIN FARM-**  
7 **LAND AND LAND OF CONSERVATION VALUE.**

8 (a) ESTATE TAX.—

1           (1) IN GENERAL.—Part IV of subchapter A of  
2           chapter 11 of the Internal Revenue Code of 1986  
3           (relating to gross estate) is amended by inserting  
4           after section 2058 the following new section:

5   **“SEC. 2059. FARM AND CONSERVATION LAND.**

6           “(a) IN GENERAL.—For purposes of the tax imposed  
7           by section 2001, the value of the taxable estate shall be  
8           determined by deducting from the value of the gross estate  
9           an amount equal to the adjusted value of the qualified  
10          farm or conservation land included in the estate.

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

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

16                 “(2) the executor elects the application of this  
17                 section and files the agreement referred to in sub-  
18                 section (d)(2) with respect to the qualified farm or  
19                 conservation land.

20          “(c) DEFINITIONS.—For purposes of this section—

21                 “(1) QUALIFIED FARM OR CONSERVATION  
22                 LAND.—The term ‘qualified farm or conservation  
23                 land’ means any real property—

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

1           “(B) which, on the date of the decedent’s  
2 death, was being used—

3           “(i) as a farm for farming purposes  
4           (within the meaning of section 2032A(e)),  
5           or

6           “(ii) exclusively for conservation pur-  
7           poses (within the meaning of section  
8           170(h)),

9           “(C) with respect to which there is a re-  
10          corded covenant which prevents any use of such  
11          land which is inconsistent with the uses de-  
12          scribed in subparagraph (B), and

13          “(D) which is designated in the agreement  
14          referred to in subsection (d)(2).

15          “(2) ADJUSTED VALUE.—The term ‘adjusted  
16          value’ means the value of the qualified farm or con-  
17          servation land for purposes of this chapter, reduced  
18          by the amount allowable as a deduction under para-  
19          graph (4) of section 2053(a).

20          “(d) ELECTION; AGREEMENT.—

21               “(1) ELECTION.—The election under this sec-  
22          tion shall be made on the return of the tax imposed  
23          by section 2001. Such election shall be made in such  
24          manner as the Secretary shall by regulations pre-

1 scribe. Such an election, once made, shall be irrev-  
2 ocable.

3 “(2) AGREEMENT.—The agreement referred to  
4 in this paragraph is a written agreement signed by  
5 each person in being who has an interest (whether  
6 or not in possession) in any property designated in  
7 such agreement consenting to the application of sub-  
8 section (e) with respect to such property.

9 “(3) MODIFICATION OF ELECTION AND AGREE-  
10 MENT PERMITTED.—The procedures prescribed  
11 under section 2032A(d)(3) shall apply for purposes  
12 of this subsection.

13 “(e) TAX TREATMENT OF DISPOSITIONS AND INCON-  
14 SISTENT USES.—In the case of a decedent’s estate which  
15 includes qualified farm or conservation land with respect  
16 to which there is a covenant described in subsection  
17 (c)(1)(C) (including such a covenant made by a prior dece-  
18 dent)—

19 “(1) IMPOSITION OF ADDITIONAL ESTATE  
20 TAX.—If, at any time after the decedent’s death and  
21 before the death of the heir—

22 “(A) the heir disposes of any interest  
23 (other than by a qualified conservation con-  
24 tribution (as defined in section 170(h))) in  
25 qualified farm or conservation land and the per-

1 son acquiring such interest is not subject to the  
2 covenant described in subsection (c)(1)(C), or

3 “(B) the heir uses such land in any man-  
4 ner which violates the terms of such covenant,  
5 then, there is hereby imposed an additional estate  
6 tax.

7 “(2) AMOUNT OF ADDITIONAL TAX.—

8 “(A) IN GENERAL.—The amount of the  
9 additional tax imposed by paragraph (1) with  
10 respect to any interest shall be the amount  
11 equal to the sum of—

12 “(i) the adjusted tax difference with  
13 respect to the estate, and

14 “(ii) interest at the underpayment  
15 rate established under section 6621 on the  
16 amount determined under clause (i) for the  
17 period beginning on the due date for filing  
18 the estate tax return.

19 “(B) ADJUSTED TAX DIFFERENCE WITH  
20 RESPECT TO ESTATE.—For purposes of this  
21 subsection, the term ‘adjusted tax difference  
22 with respect to the estate’ means the excess  
23 of—

24 “(i) what would have been the estate  
25 tax liability if the fair market value of the

1 interest at the time of the disposition or  
2 use described in paragraph (1), over

3 “(ii) the estate tax liability.

4 For purposes of this subparagraph, the term  
5 ‘estate tax liability’ means the tax imposed by  
6 section 2001 reduced by the credits allowable  
7 against such tax.

8 “(3) CERTAIN ADDITIONAL RULES TO APPLY.—  
9 Rules similar to the rules of paragraphs (2)(D),  
10 (2)(E), (3), (4), (5), and (8) of section 2032A(c)  
11 shall apply for purposes of this subsection.

12 “(4) INCOME TAX TREATMENT OF DISPOSITI-  
13 TIONS.—For purposes of chapter 1, in any case in  
14 which an additional tax is imposed by this sub-  
15 section by reason of any disposition or use of an in-  
16 terest, such interest (if not otherwise disposed of in  
17 a transaction in which gain is recognized) shall be  
18 treated as sold at its fair market value at the time  
19 of the disposition or use, and gain shall be recog-  
20 nized notwithstanding any provision of subtitle A.

21 “(f) BASIS.—For purposes of this title, the basis of  
22 any qualified farm or conservation land which is included  
23 in the estate of a decedent pursuant to subsection (a) shall  
24 be the adjusted basis of such qualified farm or conserva-  
25 tion land on the date of the decedent’s death.

1       “(g) CERTAIN ADDITIONAL RULES TO APPLY.—For  
2 purposes of this section, rules similar to the following rules  
3 shall apply:

4           “(1) CERTAIN REAL PROPERTY INCLUDED.—  
5 Section 2032A(e)(3)(A).

6           “(2) DEFINITIONS OF FARM AND FARMING  
7 PURPOSES.—Paragraphs (4) and (5) of section  
8 2032A(e).

9           “(3) PROPERTY ACQUIRED FROM DECEDENT.—  
10 Section 2032A(e)(9).

11          “(4) COMMUNITY PROPERTY.—Section  
12 2032A(e)(10).

13          “(5) BOND IN LIEU OF PERSONAL LIABILITY.—  
14 Section 2032A(e)(11).

15          “(6) SPECIAL RULE FOR WOODLANDS.—Section  
16 2032A(e)(12).

17          “(7) STATUTE OF LIMITATION.—Section  
18 2032A(f).

19          “(8) SPECIAL RULES FOR INVOLUNTARY CON-  
20 VERSIONS OF REAL PROPERTY.—Section 2032A(h).

21          “(9) EXCHANGES OF QUALIFIED REAL PROP-  
22 erty.—Section 2032A(i).

23          “(h) CROSS REFERENCE.—See section 6324C for  
24 special lien on farm and conservation land.”.

1           (2) SPECIAL LIEN FOR FARM AND CONSERVA-  
2           TION LAND.—Part II of subchapter C of chapter 64  
3           of such Code (relating to liens) is amended by in-  
4           serting after section 6324B the following new sec-  
5           tion:

6           **“SEC. 6324C. SPECIAL LIEN ON FARM AND CONSERVATION**  
7                                   **LAND.**

8           “(a) GENERAL RULE.—In the case of qualified farm  
9           or conservation land (within the meaning of section  
10          2059(c)(1)) with respect to which an election is in effect  
11          under section 2059(b)(2) or section 2524(a) or pursuant  
12          to section 2611(b)(2), an amount equal to the adjusted  
13          value attributable to such land (within the meaning of sec-  
14          tion 2059(c)(2)) shall be a lien in favor of the United  
15          States on such land.

16          “(b) PERIOD OF LIEN.—The lien imposed by this sec-  
17          tion shall arise at the time an election is filed under sec-  
18          tion 2059 and shall continue with respect to such qualified  
19          farm or conservation land until the earlier of—

20                   “(1) such land is transferred to a qualified or-  
21                   ganization (as defined in section 170(h)(3)),

22                   “(2) the liability for tax under subsection (e) of  
23                   section 2059 with respect to such land has been sat-  
24                   isfied or has become unenforceable by reason of  
25                   lapse of time, or



1           “(3) it is established to the satisfaction of the  
2           Secretary that no further tax liability may arise  
3           under section 2059(e) with respect to such land.

4           “(c) CERTAIN RULES AND DEFINITIONS MADE AP-  
5           PLICABLE.—

6           “(1) IN GENERAL.—The rule set forth in para-  
7           graphs (1), (3), and (4) of section 6324A(d) shall  
8           apply with respect to the lien imposed by this section  
9           as if it were a lien imposed by section 6324A.

10           “(2) QUALIFIED FARM OR CONSERVATION  
11           LAND.—For purposes of this section, the term  
12           ‘qualified farm or conservation land’ includes quali-  
13           fied replacement property (within the meaning of  
14           section 2032A(h)(3)(B)) and qualified exchange  
15           property (within the meaning of section  
16           2032A(i)(3)).

17           “(d) SUBSTITUTION OF SECURITY FOR LIEN.—To  
18           the extent provided in regulations prescribed by the Sec-  
19           retary, the furnishing of security may be substituted for  
20           the lien imposed by this section.”.

21           (b) CONFORMING AND CLERICAL AMENDMENTS.—

22           (1) Section 1016(a) of such Code is amended  
23           by striking “and” at the end of paragraph (36), by  
24           striking the period at the end of paragraph (37) and

1 inserting “, and”, and by inserting after paragraph  
2 (37) the following new paragraph:

3 “(38) to the extent provided in section  
4 2059(f).”.

5 (2) The table of sections for part III of sub-  
6 chapter A of chapter 11 of such Code is amended by  
7 inserting after the item relating to section 2033 the  
8 following new item:

“Sec. 2059. Farm and conservation land.”.

9 (3) The table of sections for part II of sub-  
10 chapter C of chapter 64 of such Code is amended by  
11 inserting after the item relating to section 6324B  
12 the following new item:

“Sec. 6324C. Special lien on farm and conservation land.”.

13 (c) GIFT TAX.—

14 (1) IN GENERAL.—Subchapter C of chapter 12  
15 of subtitle B of such Code (deductions) is amended  
16 by redesignating section 2524 as section 2525 and  
17 inserting after section 2523 the following new sec-  
18 tion:

19 **“SEC. 2524. GIFT OF FARM AND CONSERVATION LAND.**

20 “(a) IN GENERAL.—In computing taxable gifts for  
21 the calendar year, there shall be allowed as a deduction  
22 in the case of a citizen or resident the adjusted value of  
23 all gifts made during such year which are qualified farm  
24 or conservation land if the donee elects the application of

1 this section and files the agreement referred to in sub-  
2 section (c)(2) with respect to the qualified farm or con-  
3 servation land.

4 “(b) DEFINITIONS.—For purposes of this section—

5 “(1) QUALIFIED FARM OR CONSERVATION  
6 LAND.—The term ‘qualified farm or conservation  
7 land’ means any real property—

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

9 “(B) which, on the date of the gift, was  
10 being used—

11 “(i) as a farm for farming purposes  
12 (within the meaning of section 2032A(e)),  
13 or

14 “(ii) exclusively for conservation pur-  
15 poses (within the meaning of section  
16 170(h)),

17 “(C) with respect to which there is a re-  
18 corded covenant which prevents any use of such  
19 land which is inconsistent with the uses de-  
20 scribed in subparagraph (B), and

21 “(D) which is designated in the agreement  
22 referred to in subsection (c)(2).

23 “(2) ADJUSTED VALUE.—The term ‘adjusted  
24 value’ means the value of the qualified farm or con-  
25 servation land for purposes of this chapter, reduced

1 by the amount allowable as a deduction under para-  
2 graph (4) of section 2053(a).

3 “(c) ELECTION; AGREEMENT.—

4 “(1) ELECTION.—The election under this sec-  
5 tion shall be made in such manner as the Secretary  
6 shall by regulations prescribe. Such an election, once  
7 made, shall be irrevocable.

8 “(2) AGREEMENT.—The agreement referred to  
9 in this paragraph is a written agreement signed by  
10 each person in being who has an interest (whether  
11 or not in possession) in any property designated in  
12 such agreement consenting to the application of sub-  
13 section (d) with respect to such property.

14 “(3) MODIFICATION OF ELECTION AND AGREE-  
15 MENT PERMITTED.—The procedures prescribed  
16 under section 2032A(d)(3) shall apply for purposes  
17 of this subsection.

18 “(d) TAX TREATMENT OF DISPOSITIONS AND INCON-  
19 SISTENT USES.—In the case of a decedent’s estate which  
20 includes qualified farm or conservation land with respect  
21 to which there is a covenant described in subsection  
22 (c)(1)(C) (including such a covenant made by a prior dece-  
23 dent)—

1           “(1) IMPOSITION OF ADDITIONAL GIFT TAX.—  
2       If, at any time after the gift described in subsection  
3       (a) and before the death of the donee—

4           “(A) the donee disposes of any interest  
5           (other than by a qualified conservation con-  
6           tribution (as defined in section 170(h))) in  
7           qualified farm or conservation land and the per-  
8           son acquiring such interest is not subject to the  
9           covenant described in subsection (b)(1)(C), or

10           “(B) the donee uses such land in any man-  
11           ner which violates the terms of such covenant,  
12       then, there is hereby imposed an additional gift tax.

13           “(2) AMOUNT OF ADDITIONAL TAX.—

14           “(A) IN GENERAL.—The amount of the  
15           additional tax imposed by paragraph (1) with  
16           respect to any interest shall be the amount  
17           equal to the sum of—

18           “(i) the adjusted tax difference with  
19           respect to the gift, and

20           “(ii) interest at the underpayment  
21           rate established under section 6621 on the  
22           amount determined under clause (i) for the  
23           period beginning on the date of such gift.

24           “(B) ADJUSTED TAX DIFFERENCE WITH  
25           RESPECT TO GIFT.—For purposes of this sub-

1 section, the term ‘adjusted tax difference with  
2 respect to the gift’ means the excess of—

3 “(i) what would have been the gift tax  
4 liability if the fair market value of the in-  
5 terest at the time of the disposition or use  
6 described in paragraph (1), over

7 “(ii) the gift tax liability.

8 For purposes of this subparagraph, the term  
9 ‘gift tax liability’ means the tax imposed by sec-  
10 tion 2501 reduced by the credits allowable  
11 against such tax.

12 “(3) CERTAIN ADDITIONAL RULES TO APPLY.—  
13 Rules similar to the rules of paragraphs (2)(D),  
14 (2)(E), (3), (4), (5), and (8) of section 2032A(c)  
15 shall apply for purposes of this subsection.

16 “(4) INCOME TAX TREATMENT OF DISPOSI-  
17 TIONS.—For purposes of chapter 1, in any case in  
18 which an additional tax is imposed by this sub-  
19 section by reason of any disposition or use of an in-  
20 terest, such interest (if not otherwise disposed of in  
21 a transaction in which gain is recognized) shall be  
22 treated as sold at its fair market value at the time  
23 of the disposition or use, and gain shall be recog-  
24 nized notwithstanding any provision of subtitle A.

1       “(e) CERTAIN ADDITIONAL RULES TO APPLY.—For  
2 purposes of this section, rules similar to the following rules  
3 shall apply:

4           “(1) CERTAIN REAL PROPERTY INCLUDED.—  
5 Section 2032A(e)(3)(A).

6           “(2) DEFINITIONS OF FARM AND FARMING  
7 PURPOSES.—Paragraphs (4) and (5) of section  
8 2032A(e).

9           “(3) BOND IN LIEU OF PERSONAL LIABILITY.—  
10 Section 2032A(e)(11).

11          “(4) SPECIAL RULE FOR WOODLANDS.—Section  
12 2032A(e)(12).

13          “(5) STATUTE OF LIMITATION.—Section  
14 2032A(f).

15          “(6) SPECIAL RULES FOR INVOLUNTARY CON-  
16 VERSIONS OF REAL PROPERTY.—Section 2032A(h).

17          “(7) EXCHANGES OF QUALIFIED REAL PROP-  
18 erty.—Section 2032A(i).

19          “(f) CROSS REFERENCE.—See section 6324C for  
20 special lien on farm and conservation land.”.

21           (2) CONFORMING AMENDMENT.—Section 2525  
22 of such Code, as amended by paragraph (1), is  
23 amended by striking “sections 2522 and 2523” and  
24 inserting “sections 2522, 2523, and 2524”.

1           (3) CLERICAL AMENDMENT.—The table of sec-  
2           tions for such subchapter is amended by striking the  
3           last item and inserting the following new items:

“Sec. 2524. Gift of farm and conservation land.

“Sec. 2525. Extent of deductions.”.

4           (d) GENERATION SKIPPING TAX.—

5           (1) EXCLUSION.—Subsection (b) of section  
6           2611 of such Code (relating to certain transfers ex-  
7           cluded) is amended by redesignating paragraph (2)  
8           as paragraph (3) and by inserting after paragraph  
9           (1) the following new paragraph:

10           “(2) any transfer which, if made inter vivos by  
11           an individual, would be treated as a deduction under  
12           section 2524 (relating to gift of farm and conserva-  
13           tion land), or”.

14           (2) APPLICABLE RULES.—Subsection (b) of sec-  
15           tion 2611 of such Code is amended by adding at the  
16           end the following flush sentence:

17           “For purposes of paragraph (2), rules similar to the rules  
18           of section 2524 shall apply.”.

19           (e) EFFECTIVE DATE.—The amendments made by  
20           this section shall apply to estates of decedents dying, gifts  
21           made, and generation-skipping transfers after December  
22           31, 2008.

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