

111TH CONGRESS
1ST SESSION

H. R. 4015

To amend the Internal Revenue Code of 1986 to extend certain estate tax provisions and restore and increase the estate tax deduction for certain family-owned business interests.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 4, 2009

Mr. MCNERNEY (for himself and Mr. PERRIELLO) 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 extend certain estate tax provisions and restore and increase the estate tax deduction for 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 Farm and
5 Small Business Tax Relief Act of 2009”.

6 **SEC. 2. EXTENSION OF 2009 ESTATE AND GIFT TAX LEVELS.**

7 (a) EGTRRA SUNSET NOT TO APPLY.—Section 901
8 of the Economic Growth and Tax Relief Reconciliation Act

1 of 2001 shall not apply to title V of such Act (other than
2 subtitles A and E, and sections 511(d) and 521(b)(2),
3 thereof).

4 (b) \$3,500,000 APPLICABLE EXCLUSION AMOUNT.—

5 (1) IN GENERAL.—Subsection (c) of section
6 2010 of the Internal Revenue Code of 1986 is
7 amended by striking all that follows “the applicable
8 exclusion amount” and inserting “. For purposes of
9 the preceding sentence, the applicable exclusion
10 amount is \$3,500,000.”.

11 (2) INFLATION ADJUSTMENT.—Section 2010 of
12 such Code is amended by redesignating subsection
13 (d) as subsection (e) and by inserting after sub-
14 section (c) the following new subsection:

15 “(d) COST-OF-LIVING ADJUSTMENT.—In the case of
16 any decedent dying in a calendar year after 2011, the
17 \$3,500,000 amount in subsection (c) shall be increased by
18 an amount equal to—

19 “(1) such amount, multiplied by

20 “(2) the cost-of-living adjustment determined
21 under section 1(f)(3) for such calendar year by sub-
22 stituting ‘calendar year 2010’ for ‘calendar year
23 1992’ in subparagraph (B) thereof.

1 If any amount as adjusted under the preceding sentence
 2 is not a multiple of \$10,000, such amount shall be round-
 3 ed to the nearest multiple of \$10,000.”.

4 (c) 45 PERCENT MAXIMUM RATE.—The table in
 5 paragraph (1) of section 2001(c) of such Code is amended
 6 by striking the last 3 items and inserting the following
 7 new item:

“Over \$1,500,000	\$555,800, plus 45 percent of the ex- cess of such amount over \$1,500,000.”.
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8 (d) EFFECTIVE DATE.—The amendments made by
 9 this section shall apply to estates of decedents dying, and
 10 gifts made, after December 31, 2010.

11 **SEC. 3. RESTORATION OF, AND INCREASE IN, DEDUCTION**
 12 **FOR FAMILY-OWNED BUSINESS INTERESTS.**

13 (a) RESTORATION.—Subsection (j) of section 2057
 14 (relating to termination) is amended to read as follows:

15 “(j) APPLICATION OF SECTION.—This section—

16 “(1) shall not apply to estates of decedents
 17 dying after December 31, 2003, and before January
 18 1, 2011, but

19 “(2) shall apply to estates of decedents dying
 20 after December 31, 2010.”.

21 (b) INCREASE.—

22 (1) IN GENERAL.—Subsection (a) of section
 23 2057 is amended—

1 (A) by striking “\$675,000” in paragraph
2 (2) and inserting “\$8,000,000”, and
3 (B) by striking paragraph (3).

4 (2) COST-OF-LIVING ADJUSTMENT.—Subsection
5 (a) of section 2057 is amended by adding at the end
6 the following new paragraph:

7 “(3) COST-OF-LIVING ADJUSTMENT.—In the
8 case of any decedent dying in a calendar year after
9 2011, the \$8,000,000 amount in paragraph (2) shall
10 be increased by an amount equal to—

11 “(A) such dollar amount, multiplied by

12 “(B) the cost-of-living adjustment deter-
13 mined under section 1(f)(3) for such calendar
14 year by substituting ‘calendar year 2010’ for
15 ‘calendar year 1992’ in subparagraph (B)
16 thereof.

17 If any amount as adjusted under the preceding sen-
18 tence is not a multiple of \$10,000, such amount
19 shall be rounded to the nearest multiple of
20 \$10,000.”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to estates of decedents dying after
23 December 31, 2010.

1 **SEC. 4. 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 but not limited to livestock,
12 bees, poultry, orchards and woodlands, timber
13 and fur-bearing animals and wildlife on such
14 farmland.

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

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

20 “(1) QUALIFIED FARMLAND.—The term ‘quali-
21 fied farmland’ means any real property or other
22 property related to the farm operation—

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

24 “(B) which is used as a farm for farming
25 purposes, and

1 “(C) which was acquired from or passed
2 from the decedent to a qualified heir of the de-
3 cedent and which, on the date of the decedent’s
4 death, was being so used by the decedent or a
5 member of the decedent’s family.

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

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

10 “(B) includes—

11 “(i) a lineal descendant of any spouse
12 described in subparagraph (D) of section
13 2032A(e)(2),

14 “(ii) a lineal descendant of a sibling of
15 a parent of such individual,

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

18 “(iv) a lineal descendant of a spouses
19 described in clause (iii).

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

1 “(4) OTHER TERMS.—Any other term used in
2 this section which is also used in section 2032A shall
3 have the same meaning given such term by section
4 2032A.

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

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

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

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

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

18 “(2) AMOUNT OF RECAPTURE TAX.—

19 “(A) IN GENERAL.—The amount of the
20 tax imposed by paragraph (1) shall be the ex-
21 cess of—

22 “(i) the tax which would have been
23 imposed by section 2001 on the estate of
24 the decedent but determined as if such es-
25 tate included the interest in qualified farm-

1 land described in paragraph (1) which was
2 so disposed of or ceased to be so used, re-
3 duced by the credits allowable against such
4 tax, over

5 “(ii) the tax imposed by section 2001
6 on the estate of the decedent, reduced by
7 such credits.

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

13 “(B) \$8,000,000 EXCLUSION AMOUNT.—
14 For purposes of subparagraph (A), the adjusted
15 value of such interest shall be reduced by an
16 amount equal to—

17 “(i) \$8,000,000, reduced (but not
18 below zero) by

19 “(ii) an amount equal to the amount
20 by which the adjusted value of all other in-
21 terests in such qualified farmland has been
22 reduced previously by reason of this sub-
23 paragraph.

24 “(3) REGULATIONS.—The Secretary may pre-
25 scribe such regulations as may be necessary or ap-

1 appropriate to carry out this subsection, including reg-
2 ulations requiring record keeping and information
3 reporting, except that the Secretary may not impose
4 a lien on the estate of the decedent or qualified
5 farmland for such purposes.

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

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

14 (b) CLERICAL AMENDMENT.—The table of sections
15 for part III of subchapter A of chapter 11 of such Code
16 is amended by inserting after the item relating to section
17 2033 the following new item:

“Sec. 2033A. Exclusion of certain farmland so long as use as farmland con-
tinues.”.

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

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