

104TH CONGRESS
1ST SESSION

S. 910

To amend the Internal Revenue Code of 1986 to provide an election to exclude from the gross estate of a decedent the value of certain land subject to a qualified conservation easement, and to make technical changes to alternative valuation rules.

IN THE SENATE OF THE UNITED STATES

JUNE 9 (legislative day, JUNE 5), 1995

Mr. CHAFEE (for himself and Mr. BAUCUS) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide an election to exclude from the gross estate of a decedent the value of certain land subject to a qualified conservation easement, and to make technical changes to alternative valuation rules.

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 “American Farm and
5 Ranch Protection Act of 1995”.

1 **SEC. 2. TREATMENT OF LAND SUBJECT TO A QUALIFIED**
2 **CONSERVATION EASEMENT.**

3 (a) ESTATE TAX WITH RESPECT TO LAND SUBJECT
4 TO A QUALIFIED CONSERVATION EASEMENT.—Section
5 2031 of the Internal Revenue Code of 1986 (relating to
6 the definition of gross estate) is amended by redesignating
7 subsection (c) as subsection (d) and by inserting after sub-
8 section (b) the following new subsection:

9 “(c) ESTATE TAX WITH RESPECT TO LAND SUB-
10 JECT TO A QUALIFIED CONSERVATION EASEMENT.—

11 “(1) IN GENERAL.—If the executor makes the
12 election described in paragraph (4), then, except as
13 otherwise provided in this subsection, there shall be
14 excluded from the gross estate the value of land sub-
15 ject to a qualified conservation easement.

16 “(2) TREATMENT OF CERTAIN INDEBTED-
17 NESS.—

18 “(A) IN GENERAL.—The exclusion pro-
19 vided in paragraph (1) shall not apply to the
20 extent that the land is debt-financed property.

21 “(B) DEFINITIONS.—For purposes of this
22 paragraph—

23 “(i) DEBT-FINANCED PROPERTY.—
24 The term ‘debt-financed property’ means
25 any property with respect to which there is
26 an acquisition indebtedness (as defined in

1 clause (ii)) on the date of the decedent's
2 death.

3 “(ii) ACQUISITION INDEBTEDNESS.—
4 The term ‘acquisition indebtedness’ means,
5 with respect to debt-financed property, the
6 unpaid amount of—

7 “(I) the indebtedness incurred by
8 the donor in acquiring such property,

9 “(II) the indebtedness incurred
10 before the acquisition of such property
11 if such indebtedness would not have
12 been incurred but for such acquisition,

13 “(III) the indebtedness incurred
14 after the acquisition of such property
15 if such indebtedness would not have
16 been incurred but for such acquisition
17 and the incurrence of such indebted-
18 ness was reasonably foreseeable at the
19 time of such acquisition, except that
20 indebtedness incurred after the acqui-
21 sition of such property is not acqui-
22 sition indebtedness if incurred to carry
23 on activities directly related to farm-
24 ing, ranching, forestry, horticulture,
25 or viticulture, and

1 “(IV) the extension, renewal, or
2 refinancing of an acquisition indebted-
3 ness.

4 “(3) TREATMENT OF RETAINED DEVELOPMENT
5 RIGHT.—

6 “(A) IN GENERAL.—Paragraph (1) shall
7 not apply to the value of any development right
8 retained by the donor in the conveyance of a
9 qualified conservation easement.

10 “(B) TERMINATION OF RETAINED DEVEL-
11 OPMENT RIGHT.—If every person in being who
12 has an interest (whether or not in possession)
13 in such land shall execute an agreement to ex-
14 tinguish permanently some or all of any devel-
15 opment rights (as defined in subparagraph (D))
16 retained by the donor on or before the date for
17 filing the return of the tax imposed by section
18 2001, then any tax imposed by section 2001
19 shall be reduced accordingly. Such agreement
20 shall be filed with the return of the tax imposed
21 by section 2001. The agreement shall be in
22 such form as the Secretary shall prescribe.

23 “(C) ADDITIONAL TAX.—Failure to imple-
24 ment the agreement described in subparagraph
25 (B) within 2 years of the decedent’s death shall

1 result in the imposition of an additional tax in
2 the amount of the tax which would have been
3 due on the retained development rights subject
4 to such agreement. Such additional tax shall be
5 due and payable on the last day of the 6th
6 month following the end of the 2-year period.

7 “(D) DEVELOPMENT RIGHT DEFINED.—
8 For purposes of this paragraph, the term ‘de-
9 velopment right’ means the right to establish or
10 use any structure and the land immediately sur-
11 rounding it for sale (other than the sale of the
12 structure as part of a sale of the entire tract of
13 land subject to the qualified conservation ease-
14 ment), or other commercial purpose which is
15 not subordinate to and directly supportive of
16 the activity of farming, forestry, ranching, hor-
17 ticulture, or viticulture conducted on land sub-
18 ject to the qualified conservation easement in
19 which such right is retained.

20 “(4) ELECTION.—The election under this sub-
21 section shall be made on the return of the tax im-
22 posed by section 2001. Such an election, once made,
23 shall be irrevocable.

24 “(5) CALCULATION OF ESTATE TAX DUE.—An
25 executor making the election described in paragraph

1 (4) shall, for purposes of calculating the amount of
2 tax imposed by section 2001, include the value of
3 any development right (as defined in paragraph (3))
4 retained by the donor in the conveyance of such
5 qualified conservation easement. The computation of
6 tax on any retained development right prescribed in
7 this paragraph shall be done in such manner and on
8 such forms as the Secretary shall prescribe.

9 “(6) DEFINITIONS.—For purposes of this sub-
10 section—

11 “(A) LAND SUBJECT TO A QUALIFIED
12 CONSERVATION EASEMENT.—The term ‘land
13 subject to a qualified conservation easement’
14 means land—

15 “(i) which is located in or within 50
16 miles of an area which, on the date of the
17 decedent’s death, is—

18 “(I) a metropolitan area (as de-
19 fined by the Office of Management
20 and Budget), or

21 “(II) a national park or wilder-
22 ness area designated as part of the
23 National Wilderness Preservation Sys-
24 tem (unless it is determined by the
25 Secretary that land in or within 50

1 miles of such a park or wilderness
2 area is not under significant develop-
3 ment pressure),

4 “(ii) which was owned by the decedent
5 or a member of the decedent’s family at all
6 times during the 3-year period ending on
7 the date of the decedent’s death, and

8 “(iii) with respect to which a qualified
9 conservation easement is or has been made
10 by the decedent or a member of the dece-
11 dent’s family.

12 “(B) QUALIFIED CONSERVATION EASE-
13 MENT.—The term ‘qualified conservation ease-
14 ment’ means a qualified conservation contribu-
15 tion (as defined in section 170(h)(1)) of a quali-
16 fied real property interest (as defined in section
17 170(h)(2)(C)), except that clause (iv) of section
18 170(h)(4)(A) shall not apply, and the restric-
19 tion on the use of such interest described in
20 section 170(h)(2)(C) shall include a prohibition
21 on commercial recreational activity.

22 “(C) MEMBER OF FAMILY.—The term
23 ‘member of the decedent’s family’ means any
24 member of the family (as defined in section
25 2032A(e)(2)) of the decedent.

1 “(h) GIFT TAX WITH RESPECT TO LAND SUBJECT
2 TO A QUALIFIED CONSERVATION EASEMENT.—The trans-
3 fer by gift of land subject to a qualified conservation ease-
4 ment shall not be treated as a transfer of property by gift
5 for purposes of this chapter. For purposes of this sub-
6 section, the term ‘land subject to a qualified conservation
7 easement’ has the meaning given to such term by section
8 2031(c), except that references to the decedent shall be
9 treated as references to the donor and references to the
10 date of the decedent’s death shall be treated as references
11 to the date of the transfer by the donor.”

12 (b) EFFECTIVE DATE.—The amendment made by
13 this section shall apply to gifts made after December 31,
14 1995.

15 **SEC. 4. QUALIFIED CONSERVATION CONTRIBUTION IS NOT**
16 **A DISPOSITION.**

17 (a) QUALIFIED CONSERVATION CONTRIBUTION IS
18 NOT A DISPOSITION.—Subsection (c) of section 2032A of
19 the Internal Revenue Code of 1986 (relating to alternative
20 valuation method) is amended by adding at the end the
21 following new paragraphs:

22 “(8) QUALIFIED CONSERVATION CONTRIBUTION
23 IS NOT A DISPOSITION.—A qualified conservation
24 contribution (as defined in section 170(h)) by gift or

1 otherwise shall not be deemed a disposition under
2 subsection (c)(1)(A).

3 “(9) EXCEPTION FOR REAL PROPERTY IS LAND
4 SUBJECT TO A QUALIFIED CONSERVATION EASE-
5 MENT.—If qualified real property is land subject to
6 a qualified conservation easement (as defined in sec-
7 tion 2031(c)), the preceding paragraphs of this sub-
8 section shall not apply.”

9 (b) LAND SUBJECT TO A QUALIFIED CONSERVATION
10 EASEMENT IS NOT DISQUALIFIED.—Subsection (b) of
11 section 2032A of such Code (relating to alternative valu-
12 ation method) is amended by adding at the end the follow-
13 ing subparagraph:

14 “(E) If property is otherwise qualified real
15 property, the fact that it is land subject to a
16 qualified conservation easement (as defined in
17 section 2031(c)) shall not disqualify it under
18 this section.”

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply with respect to contributions made,
21 and easements granted, after December 31, 1995.

1 **SEC. 5. QUALIFIED CONSERVATION CONTRIBUTION WHERE**
2 **SURFACE AND MINERAL RIGHTS ARE SEPA-**
3 **RATED.**

4 (a) **IN GENERAL.**—Section 170(h)(5)(B)(ii) of the
5 Internal Revenue Code of 1986 (relating to special rule)
6 is amended to read as follows:

7 “(ii) **SPECIAL RULE.**—With respect to
8 any contribution of property in which the
9 ownership of the surface estate and min-
10 eral interests has been and remains sepa-
11 rated, subparagraph (A) shall be treated as
12 met if the probability of surface mining oc-
13 ccurring on such property is so remote as to
14 be negligible.”

15 (b) **EFFECTIVE DATE.**—The amendment made by
16 this section shall apply with respect to contributions made
17 after December 31, 1992, in taxable years ending after
18 such date.

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