

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 1366

To amend the Internal Revenue Code of 1986 to allow a deduction from the gross estate of a decedent in an amount equal to the value of real property subject to an endangered species conservation agreement.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 26, 1995

Mr. KEMPTHORNE (for himself, Mr. CHAFEE, Mr. WARNER, Mr. FAIRCLOTH, Mr. INHOFE, Mr. THOMAS, Mr. McCONNELL, Mr. CRAIG, Mr. BENNETT, Mr. BURNS, and Mr. COCHRAN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to allow a deduction from the gross estate of a decedent in an amount equal to the value of real property subject to an endangered species conservation agreement.

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. EXCLUSION FROM ESTATE FOR REAL PROP-**  
4                               **ERTY SUBJECT TO ENDANGERED SPECIES**  
5                               **CONSERVATION AGREEMENT.**

6       (a) IN GENERAL.—Part IV of subchapter A of chap-  
7       ter 11 of the Internal Revenue Code of 1986 (relating to

1 taxable estate) is amended by adding at the end the follow-  
2 ing new section:

3 **“SEC. 2057. CERTAIN REAL PROPERTY SUBJECT TO ENDAN-**  
4 **GERED SPECIES CONSERVATION AGREE-**  
5 **MENT.**

6 “(a) GENERAL RULE.—For purposes of the tax im-  
7 posed by section 2001, the value of the taxable estate shall  
8 be determined by deducting from the value of the gross  
9 estate an amount equal to the adjusted value of real prop-  
10 erty included in the gross estate which is subject to an  
11 endangered species conservation agreement.

12 “(b) PROPERTY SUBJECT TO AN ENDANGERED SPE-  
13 CIES CONSERVATION AGREEMENT.—For purposes of this  
14 section—

15 “(1) IN GENERAL.—Real property shall be  
16 treated as subject to an endangered species con-  
17 servation agreement if—

18 “(A) each person who has an interest in  
19 such property (whether or not in possession)  
20 has entered into—

21 “(i) an endangered species conserva-  
22 tion agreement with respect to such prop-  
23 erty, and

1           “(ii) a written agreement with the  
2           Secretary consenting to the application of  
3           subsection (d), and

4           “(B) the executor of the decedent’s es-  
5           tate—

6           “(i) elects the application of this sec-  
7           tion, and

8           “(ii) files with the Secretary such en-  
9           dangered species conservation agreement.

10          “(2) ADJUSTED VALUE.—The adjusted value of  
11          any real property shall be its value for purposes of  
12          this chapter, reduced by any amount deductible  
13          under section 2053(a)(4) with respect to the prop-  
14          erty.

15          “(c) ENDANGERED SPECIES CONSERVATION AGREE-  
16          MENT.—For purposes of this section—

17          “(1) IN GENERAL.—The term ‘endangered spe-  
18          cies conservation agreement’ means a written agree-  
19          ment entered into with the Secretary of the Interior  
20          or the Secretary of Commerce—

21          “(A) which commits each person who  
22          signed such agreement to carry out on the real  
23          property activities or practices not otherwise re-  
24          quired by law or to refrain from carrying out on

1 such property activities or practices that could  
2 otherwise be lawfully carried out,

3 “(B) which is certified by such Secretary  
4 as assisting in the conservation of any species  
5 which is—

6 “(i) designated by such Secretary as  
7 an endangered or threatened species under  
8 the Endangered Species Act of 1973 (16  
9 U.S.C. 1531 et seq.),

10 “(ii) proposed for such designation, or

11 “(iii) officially identified by such Sec-  
12 retary as a candidate for possible future  
13 protection as an endangered or threatened  
14 species, and

15 “(C) which applies to at least one-half of  
16 the total area of the property.

17 “(2) ANNUAL CERTIFICATION TO THE SEC-  
18 RETARY BY THE SECRETARY OF THE INTERIOR OR  
19 THE SECRETARY OF COMMERCE OF THE STATUS OF  
20 ENDANGERED SPECIES CONSERVATION AGREE-  
21 MENTS.—If the executor elects the application of  
22 this section, the executor shall promptly give written  
23 notice of such election to the Secretary of the Inte-  
24 rior or the Secretary of Commerce. The Secretary of  
25 the Interior or the Secretary of Commerce shall

1       thereafter annually certify to the Secretary that the  
2       endangered species conservation agreement applica-  
3       ble to any property for which such election has been  
4       made remains in effect and is being satisfactorily  
5       complied with.

6       “(d) RECAPTURE OF TAX BENEFIT IN CERTAIN  
7       CASES.—

8               “(1) DISPOSITION OF INTEREST OR MATERIAL  
9       BREACH.—

10               “(A) IN GENERAL.—Except as provided in  
11       subparagraph (C), an additional tax in the  
12       amount determined under subparagraph (B)  
13       shall be imposed on any person on the earlier  
14       of—

15               “(i) the disposition by such person of  
16       any interest in property subject to an en-  
17       dangered species conservation agreement  
18       (other than a disposition described in sub-  
19       paragraph (C)),

20               “(ii) the failure by such person to  
21       comply with the terms of the endangered  
22       species conservation agreement, or

23               “(iii) the termination of the endan-  
24       gered species conservation agreement.

1           “(B) AMOUNT OF ADDITIONAL TAX.—The  
2           amount of the additional tax imposed by sub-  
3           paragraph (A) shall be an amount that bears  
4           the same ratio to the fair market value of the  
5           real property at the time of the event described  
6           in subparagraph (A) as the ratio of the amount  
7           by which the estate tax liability was reduced by  
8           virtue of this section bore to the fair market  
9           value of such property at the time the executor  
10          filed the agreement under subsection (b)(1).  
11          For purposes of this subparagraph, the term  
12          ‘estate tax liability’ means the tax imposed by  
13          section 2001 reduced by the credits allowable  
14          against such tax.

15          “(C) EXCEPTION IF TRANSFEREE AS-  
16          SUMES OBLIGATIONS OF TRANSFEROR.—Sub-  
17          paragraph (A)(i) shall not apply if the trans-  
18          feror and the transferee of the property enter  
19          into a written agreement pursuant to which the  
20          transferee agrees—

21                  “(i) to assume the obligations imposed  
22                  on the transferor under the endangered  
23                  species conservation agreement,

24                  “(ii) to assume personal liability for  
25                  any tax imposed under subparagraph (A)

1 with respect to any future event described  
2 in subparagraph (A), and

3 “(iii) to notify the Secretary of the  
4 Treasury and the Secretary of the Interior  
5 or the Secretary of Commerce that the  
6 transferee has assumed such obligations  
7 and liability.

8 If a transferee enters into an agreement de-  
9 scribed in clauses (i), (ii), and (iii), such trans-  
10 feree shall be treated as signatory to the endan-  
11 gered species conservation agreement the trans-  
12 feror entered into.

13 “(2) DUE DATE OF ADDITIONAL TAX.—The ad-  
14 ditional tax imposed by paragraph (1) shall become  
15 due and payable on the day that is 6 months after  
16 the date of the disposition referred to in paragraph  
17 (1)(A)(i) or, in the case of an event described in  
18 clause (ii) or (iii) of paragraph (1)(A), on April 15  
19 of the calendar year following any year in which the  
20 Secretary of the Interior or the Secretary of Com-  
21 merce fails to provide the certification required  
22 under subsection (c)(2).

23 “(e) STATUTE OF LIMITATIONS.—If a taxpayer in-  
24 curs a tax liability pursuant to subsection (d)(1)(A),  
25 then—

1           “(1) the statutory period for the assessment of  
2           any additional tax imposed by subsection (d)(1)(A)  
3           shall not expire before the expiration of 3 years from  
4           the date the Secretary is notified (in such manner  
5           as the Secretary may by regulation prescribe) of the  
6           incurring of such tax liability, and

7           “(2) such additional tax may be assessed before  
8           the expiration of such 3-year period notwithstanding  
9           the provisions of any other law or rule of law that  
10          would otherwise prevent such assessment.

11          “(f) ELECTION AND FILING OF AGREEMENT.—The  
12          election under this section shall be made on the return  
13          of the tax imposed by section 2001. Such election, and  
14          the filing under subsection (a) of an endangered species  
15          conservation agreement, shall be made in such manner as  
16          the Secretary shall by regulation provide.

17          “(g) APPLICATION OF THIS SECTION TO INTERESTS  
18          IN PARTNERSHIPS, CORPORATIONS, AND TRUSTS.—The  
19          Secretary shall prescribe regulations setting forth the ap-  
20          plication of this section in the case of an interest in a part-  
21          nership, corporation, or trust which, with respect to a de-  
22          cedent, is an interest in a closely held business (within  
23          the meaning of paragraph (1) of section 6166(b)). For  
24          purposes of the preceding sentence, an interest in a discre-



1 tionary trust all the beneficiaries of which are heirs of the  
2 decedent shall be treated as a present interest.”

3 (b) CLERICAL AMENDMENT.—The table of sections  
4 for part IV of subchapter A of chapter 11 of the Internal  
5 Revenue Code of 1986 is amended by adding at the end  
6 the following new item:

“Sec. 2057. Certain real property subject to endangered species conservation  
agreement.”

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

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