

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3101

To amend the Internal Revenue Code of 1986 to provide a temporary reduction in the tax on capital gains and to provide for the indexing of certain assets.

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IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 1993

Mr. KYL 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 a temporary reduction in the tax on capital gains and to provide for the indexing of certain assets.

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 “Window of Oppor-  
5 tunity Act”.

1 **TITLE I—TEMPORARY REDUC-**  
2 **TION IN TAX ON CAPITAL**  
3 **GAINS**

4 **SEC. 101. TEMPORARY REDUCTION IN INDIVIDUAL CAPITAL**  
5 **GAINS TAX.**

6 Section 1 of the Internal Revenue Code of 1986 (re-  
7 lating to tax imposed on individuals) is amended by adding  
8 at the end thereof the following new subsection:

9 “(i) TEMPORARY REDUCTION IN CAPITAL GAINS  
10 RATE.—

11 “(1) IN GENERAL.—If a taxpayer has a morato-  
12 rium period gain for any taxable year—

13 “(A) subsection (h) shall not apply to such  
14 taxable year, and

15 “(B) the tax imposed by this section for  
16 such taxable year shall not exceed the sum of—

17 “(i) a tax computed at the rates and  
18 in the same manner as if this subsection  
19 had not been enacted on taxable income re-  
20 duced by the amount of the net capital  
21 gain,

22 “(ii) 6 percent of the lesser of—

23 “(I) the moratorium period gain  
24 for the taxable year, or

1                   “(II) the portion of the tax-  
2                   payer’s taxable income for the taxable  
3                   year which would be taxed at a rate in  
4                   excess of 28 percent (determined with-  
5                   out regard to this subsection and sub-  
6                   section (h)),

7                   “(iii) 3 percent of the portion of the  
8                   moratorium period gain for the taxable  
9                   year which is not subject to tax under  
10                  clause (ii), and

11                  “(iv) 28 percent of the excess (if any)  
12                  of the net capital gain for the taxable year  
13                  over the moratorium period gain.

14                  “(2) MORATORIUM PERIOD GAIN.—For pur-  
15                  poses of this subsection, the term ‘moratorium pe-  
16                  riod gain’ means the lesser of—

17                         “(A) the net capital gain for the taxable  
18                         year determined by only taking into account  
19                         gain and loss properly taken into account for  
20                         the portion of the taxable year within the mora-  
21                         torium period, or

22                         “(B) the net capital gain for the taxable  
23                         year.

24                  “(3) MORATORIUM PERIOD.—For purposes of  
25                  this subsection, the term ‘moratorium period’ means

1 the 1 year period beginning on the date of the enact-  
2 ment of the Window of Opportunity Act.

3 “(4) TREATMENT OF PASS-THRU ENTITIES.—

4 “(A) IN GENERAL.—In applying this sub-  
5 section with respect to any pass-thru entity, the  
6 determination of the period for which any gain  
7 or loss is properly taken into account shall be  
8 made at the entity level.

9 “(B) PASS-THRU ENTITY.—For purposes  
10 of subparagraph (A), the term ‘pass-thru entity’  
11 means—

12 “(i) a regulated investment company,

13 “(ii) a real estate investment trust,

14 “(iii) an S corporation,

15 “(iv) a partnership,

16 “(v) an estate or trust, and

17 “(vi) a common trust fund.”

18 **SEC. 102. TEMPORARY REDUCTION IN CORPORATE CAP-**  
19 **ITAL GAINS TAX.**

20 Section 1201 of the Internal Revenue Code of 1986  
21 (relating to alternative tax for corporations) is amended  
22 by redesignating subsection (b) as subsection (c) and by  
23 inserting after subsection (a) the following new subsection:

24 “(b) TEMPORARY REDUCTION IN CAPITAL GAINS  
25 RATE.—

1           “(1) IN GENERAL.—If a corporation has a mor-  
2           atorium period gain for any taxable year—

3                   “(A) subsection (a) shall not apply to such  
4           taxable year, and

5                   “(B) in lieu of any tax imposed by section  
6           11, 511, 801(a), or 831 (a) or (b), there is  
7           hereby imposed a tax (if such tax is less than  
8           the tax imposed by such sections) which shall  
9           consist of the sum of—

10                   “(i) a tax computed at the rates and  
11           in the same manner as if this subsection  
12           had not been enacted on taxable income re-  
13           duced by the amount of the net capital  
14           gain,

15                   “(ii) 6 percent of the lesser of—

16                   “(I) the moratorium period gain  
17           for the taxable year, or

18                   “(II) the portion of the tax-  
19           payer’s taxable income for the taxable  
20           year which would be taxed at a rate in  
21           excess of 25 percent (determined with-  
22           out regard to this subsection),

23                   “(iii) 3 percent of the portion of the  
24           moratorium period gain for the taxable

1 year which is not subject to tax under  
2 clause (ii), and

3 “(iv) 34 percent of the excess of the  
4 net capital gain for the taxable year over  
5 the moratorium period gain.

6 “(2) MORATORIUM PERIOD GAIN.—For pur-  
7 poses of this subsection, the term ‘moratorium pe-  
8 riod gain’ has the meaning given such term by sec-  
9 tion 1(i)(2).”

10 **SEC. 103. TEMPORARY REDUCTION IN MINIMUM TAX.**

11 Subsection (b) of section 55 of the Internal Revenue  
12 Code of 1986 (defining tentative minimum tax) is amend-  
13 ed by adding at the end thereof the following new para-  
14 graph:

15 “(3) TEMPORARY REDUCTION IN TAX ON CAP-  
16 ITAL GAINS.—

17 “(A) IN GENERAL.—If the taxpayer has a  
18 moratorium period gain for any taxable year,  
19 the amount determined under subparagraph (A)  
20 of paragraph (1) shall not exceed the sum of—

21 “(i) the amount determined under  
22 subparagraph (A) on the amount of the  
23 taxable excess reduced by the moratorium  
24 period gain,

1           “(ii) 6 percent of the moratorium pe-  
2           riod gain for the taxable year to the extent  
3           such gain does not exceed the amount sub-  
4           ject to tax under section 1(i)(1)(B)(ii) or  
5           section 1201(b)(1)(B)(ii), and

6           “(iii) 3 percent of the portion of the  
7           moratorium period gain for the taxable  
8           year which is not subject to tax under  
9           clause (ii).

10           “(B) TAXABLE EXCESS.—For purposes of  
11           this paragraph, the term ‘taxable excess’ means  
12           the excess of the alternative minimum taxable  
13           income for the taxable year over the exemption  
14           amount.

15           “(C) MORATORIUM PERIOD GAIN.—For  
16           purposes of this paragraph, the term ‘morato-  
17           rium period gain’ has the meaning given to  
18           such term by section 1(i)(2); except that in no  
19           event shall the amount of the moratorium pe-  
20           riod gain exceed the taxable excess.”

21 **SEC. 104. EFFECTIVE DATE.**

22           The amendments made by this title shall apply to tax-  
23           able years ending after the date of the enactment of this  
24           Act.

1 **TITLE II—INDEXING OF CERTAIN**  
2 **ASSETS**

3 **SEC. 201. INDEXING OF CERTAIN ASSETS FOR PURPOSES**  
4 **OF DETERMINING GAIN OR LOSS.**

5 (a) IN GENERAL.—Part II of subchapter O of chap-  
6 ter 1 of the Internal Revenue Code of 1986 (relating to  
7 basis rules of general application) is amended by inserting  
8 after section 1021 the following new section:

9 **“SEC. 1022. INDEXING OF CERTAIN ASSETS FOR PURPOSES**  
10 **OF DETERMINING GAIN OR LOSS.**

11 “(a) GENERAL RULE.—

12 “(1) INDEXED BASIS SUBSTITUTED FOR AD-  
13 JUSTED BASIS.—Except as provided in paragraph  
14 (2), if an indexed asset which has been held for  
15 more than 1 year is sold or otherwise disposed of,  
16 for purposes of this title the indexed basis of the  
17 asset shall be substituted for its adjusted basis.

18 “(2) EXCEPTION FOR DEPRECIATION, ETC.—  
19 The deduction for depreciation, depletion, and amor-  
20 tization shall be determined without regard to the  
21 application of paragraph (1) to the taxpayer or any  
22 other person.

23 “(b) INDEXED ASSET.—

24 “(1) IN GENERAL.—For purposes of this sec-  
25 tion, the term ‘indexed asset’ means—

1           “(A) stock in a corporation, and

2           “(B) tangible property (or any interest  
3           therein),

4           which is a capital asset or property used in the trade  
5           or business (as defined in section 1231(b)).

6           “(2) CERTAIN PROPERTY EXCLUDED.—For  
7           purposes of this section, the term ‘indexed asset’  
8           does not include—

9           “(A) CREDITOR’S INTEREST.—Any interest  
10          in property which is in the nature of a credi-  
11          tor’s interest.

12          “(B) OPTIONS.—Any option or other right  
13          to acquire an interest in property.

14          “(C) NET LEASE PROPERTY.—In the case  
15          of a lessor, net lease property (within the mean-  
16          ing of subsection (h)(1)).

17          “(D) CERTAIN PREFERRED STOCK.—Stock  
18          which is fixed and preferred as to dividends and  
19          does not participate in corporate growth to any  
20          significant extent.

21          “(E) STOCK IN FOREIGN CORPORA-  
22          TIONS.—Stock in a foreign corporation.

23          “(3) EXCEPTION FOR STOCK IN FOREIGN COR-  
24          PORATION WHICH IS REGULARLY TRADED ON NA-  
25          TIONAL OR REGIONAL EXCHANGE.—Paragraph

1 (2)(E) shall not apply to stock in a foreign corpora-  
2 tion the stock of which is listed on the New York  
3 Stock Exchange, the American Stock Exchange, or  
4 any domestic regional exchange for which quotations  
5 are published on a regular basis other than—

6 “(A) stock of a foreign investment com-  
7 pany (within the meaning of section 1246(b)),  
8 and

9 “(B) stock in a foreign corporation held by  
10 a United States person who meets the require-  
11 ments of section 1248(a)(2).

12 “(c) INDEXED BASIS.—For purposes of this sec-  
13 tion—

14 “(1) INDEXED BASIS.—The indexed basis for  
15 any asset is—

16 “(A) the adjusted basis of the asset, multi-  
17 plied by

18 “(B) the applicable inflation ratio.

19 “(2) APPLICABLE INFLATION RATIO.—The ap-  
20 plicable inflation ratio for any asset is the percent-  
21 age arrived at by dividing—

22 “(A) the gross national product deflator  
23 the calendar quarter in which the disposition  
24 takes place, by

1           “(B) the gross national product deflator  
2           for the calendar quarter in which the asset was  
3           acquired by the taxpayer (or, if later, the cal-  
4           endar quarter ending December 31, 1993).

5           The applicable inflation ratio shall not be taken into  
6           account unless it is greater than 1. The applicable  
7           inflation ratio for any asset shall be rounded to the  
8           nearest one-tenth of 1 percent.

9           “(3) GROSS NATIONAL PRODUCT DEFLATOR.—  
10          The gross national product deflator for any calendar  
11          quarter is the implicit price deflator for the gross  
12          national product for such quarter (as shown in the  
13          first revision thereof).

14          “(d) SPECIAL RULES.—For purposes of this sec-  
15          tion—

16                 “(1) TREATMENT AS SEPARATE ASSET.—In the  
17                 case of any asset, the following shall be treated as  
18                 a separate asset:

19                         “(A) a substantial improvement to prop-  
20                         erty,

21                         “(B) in the case of stock of a corporation,  
22                         a substantial contribution to capital, and

23                         “(C) any other portion of an asset to the  
24                         extent that separate treatment of such portion

1 is appropriate to carry out the purposes of  
2 this section.

3 “(2) ASSETS WHICH ARE NOT INDEXED ASSETS  
4 THROUGHOUT HOLDING PERIOD.—

5 “(A) IN GENERAL.—The applicable infla-  
6 tion ratio shall be appropriately reduced for cal-  
7 endar months at any time during which the  
8 asset was not an indexed asset.

9 “(B) CERTAIN SHORT SALES.—For pur-  
10 poses of applying subparagraph (A), an asset  
11 shall be treated as not an indexed asset for any  
12 short sale period during which the taxpayer or  
13 the taxpayer’s spouse sells short property sub-  
14 stantially identical to the asset. For purposes of  
15 the preceding sentence, the short sale period be-  
16 gins on the day after the substantially identical  
17 property is sold and ends on the closing date  
18 for the sale.

19 “(3) TREATMENT OF CERTAIN DISTRIBU-  
20 TIONS.—A distribution with respect to stock in a  
21 corporation which is not a dividend shall be treated  
22 as a disposition.

23 “(4) SECTION CANNOT INCREASE ORDINARY  
24 LOSS.—To the extent that (but for this paragraph)  
25 this section would create or increase a net ordinary

1 loss to which section 1231(a)(2) applies or an ordi-  
2 nary loss to which any other provision of this title  
3 applies, such provision shall not apply. The taxpayer  
4 shall be treated as having a long-term capital loss in  
5 an amount equal to the amount of the ordinary loss  
6 to which the preceding sentence applies.

7 “(5) ACQUISITION DATE WHERE THERE HAS  
8 BEEN PRIOR APPLICATION OF SUBSECTION (a)(1)  
9 WITH RESPECT TO THE TAXPAYER.—If there has  
10 been a prior application of subsection (a)(1) to an  
11 asset while such asset was held by the taxpayer, the  
12 date of acquisition of such asset by the taxpayer  
13 shall be treated as not earlier than the date of the  
14 most recent such prior application.

15 “(6) COLLAPSIBLE CORPORATIONS.—The appli-  
16 cation of section 341(a) (relating to collapsible cor-  
17 porations) shall be determined without regard to this  
18 section.

19 “(e) CERTAIN CONDUIT ENTITIES.—

20 “(1) REGULATED INVESTMENT COMPANIES;  
21 REAL ESTATE INVESTMENT TRUSTS; COMMON TRUST  
22 FUNDS.—

23 “(A) IN GENERAL.—Stock in a qualified  
24 investment entity shall be an indexed asset for  
25 any calendar month in the same ratio as the

1 fair market value of the assets held by such en-  
2 tity at the close of such month which are in-  
3 dexed assets bears to the fair market value of  
4 all assets of such entity at the close of such  
5 month.

6 “(B) RATIO OF 90 PERCENT OR MORE.—If  
7 the ratio for any calendar month determined  
8 under subparagraph (A) would (but for this  
9 subparagraph) be 90 percent or more, such  
10 ratio for such month shall be 100 percent.

11 “(C) RATIO OF 10 PERCENT OR LESS.—If  
12 the ratio for any calendar month determined  
13 under subparagraph (A) would (but for this  
14 subparagraph) be 10 percent or less, such ratio  
15 for such month shall be zero.

16 “(D) VALUATION OF ASSETS IN CASE OF  
17 REAL ESTATE INVESTMENT TRUSTS.—Nothing  
18 in this paragraph shall require a real estate in-  
19 vestment trust to value its assets more fre-  
20 quently than once each 36 months (except  
21 where such trust ceases to exist). The ratio  
22 under subparagraph (A) for any calendar  
23 month for which there is no valuation shall be  
24 the trustee’s good faith judgment as to such  
25 valuation.

1           “(E) QUALIFIED INVESTMENT ENTITY.—

2           For purposes of this paragraph, the term

3           ‘qualified investment entity’ means—

4                   “(i) a regulated investment company  
5                   (within the meaning of section 851),

6                   “(ii) a real estate investment trust  
7                   (within the meaning of section 856), and

8                   “(iii) a common trust fund (within the  
9                   meaning of section 584).

10           “(2) PARTNERSHIPS.—In the case of a partner-  
11           ship, the adjustment made under subsection (a) at  
12           the partnership level shall be passed through to the  
13           partners.

14           “(f) DISPOSITIONS BETWEEN RELATED PERSONS.—

15                   “(1) IN GENERAL.—This section shall not apply  
16                   to any sale or other disposition of property between  
17                   related persons except to the extent that the basis  
18                   of such property in the hands of the transferee is a  
19                   substituted basis.

20           “(2) RELATED PERSONS DEFINED.—For pur-  
21           poses of this section, the term ‘related persons’  
22           means—

23                   “(A) persons bearing a relationship set  
24                   forth in section 267(b), and

1           “(B) persons treated as single employer  
2           under subsection (b) or (c) of section 414.

3           “(g) TRANSFERS TO INCREASE INDEXING ADJUST-  
4           MENT.—If any person transfers cash, debt, or any other  
5           property to another person and the principal purpose of  
6           such transfer is to secure or increase an adjustment under  
7           subsection (a), the Secretary may disallow part or all of  
8           such adjustment or increase.

9           “(h) DEFINITIONS.—For purposes of this section—

10           “(1) NET LEASE PROPERTY DEFINED.—The  
11           term ‘net lease property’ means leased real property  
12           where—

13           “(A) the term of the lease (taking into ac-  
14           count options to renew) was 50 percent or more  
15           of the useful life of the property, and

16           “(B) for the period of the lease, the sum  
17           of the deductions with respect to such property  
18           which are allowable to the lessor solely by rea-  
19           son of section 162 (other than rents and reim-  
20           bursed amounts with respect to such property)  
21           is 15 percent or less of the rental income pro-  
22           duced by such property.

23           “(2) STOCK INCLUDES INTEREST IN COMMON  
24           TRUST FUND.—The term ‘stock in a corporation’ in-

1 includes any interest in a common trust fund (as de-  
2 fined in section 584(a)).

3 “(i) REGULATIONS.—The Secretary shall prescribe  
4 such regulations as may be necessary or appropriate to  
5 carry out the purposes of this section.”

6 (b) CLERICAL AMENDMENT.—The table of sections  
7 for part II of subchapter O of such chapter 1 is amended  
8 by inserting after the item relating to section 1021 the  
9 following new item:

“Sec. 1022. Indexing of certain assets for purposes of determining  
gain or loss.”

10 (c) ADJUSTMENT TO APPLY FOR PURPOSES OF DE-  
11 TERMINING EARNINGS AND PROFITS.—Subsection (f) of  
12 section 312 (relating to effect on earnings and profits of  
13 gain or loss and of receipt of tax-free distributions) is  
14 amended by adding at the end thereof the following new  
15 paragraph:

16 “(3) EFFECT ON EARNINGS AND PROFITS OF  
17 INDEXED BASIS.—

**For substitution of indexed basis for adjusted  
basis in the case of the disposition of certain assets  
after December 31, 1993 see section 1022(a)(1).”**

18 **SEC. 202. EFFECTIVE DATE.**

19 The amendments made by section 201 shall apply to  
20 dispositions after December 31, 1993, in taxable years  
21 ending after such date.



HR 3101 IH—2