

103^D CONGRESS
2^D SESSION

S. 1986

To amend the Internal Revenue Code of 1986 to provide tax incentives to encourage the preservation of low-income housing.

IN THE SENATE OF THE UNITED STATES

MARCH 25 (legislative day, FEBRUARY 22), 1994

Mr. BREAUX 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 tax incentives to encourage the preservation of low-income housing.

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 “Low-Income Housing
5 Preservation Act of 1994”.

6 **SEC. 2. 15-YEAR RECOVERY PERIOD.**

7 (a) GENERAL RULE.—Subsection (c) of section 168
8 of the Internal Revenue Code of 1986 (relating to applica-
9 ble recovery period) is amended—

1 (1) by striking “as provided in paragraph (2)”
2 in paragraph (1) and inserting “as otherwise pro-
3 vided in this subsection”,

4 (2) by redesignating paragraph (2) as para-
5 graph (3), and

6 (3) by inserting after paragraph (1) the follow-
7 ing new paragraph:

8 “(2) LOW-INCOME HOUSING.—In the case of
9 any residential rental property which is part of a
10 qualified low-income housing project (as defined in
11 subsection (i)(14)), the applicable recovery period
12 shall be 15 years.”.

13 (b) QUALIFIED LOW-INCOME HOUSING PROJECT.—
14 Subsection (i) of section 168 of such Code is amended by
15 adding at the end thereof the following new paragraph:

16 “(14) QUALIFIED LOW-INCOME HOUSING
17 PROJECT.—

18 “(A) IN GENERAL.—For purposes of this
19 section, the term ‘qualified low-income housing
20 project’ means any project for residential rental
21 property if—

22 “(i) such project is assisted under a
23 specified HUD program,

24 “(ii) 50 percent or more of the resi-
25 dential units in such project—

1 “(I) in the case of a project de-
2 scribed in clause (i) or (ii) of subpara-
3 graph (C), are occupied by individuals
4 whose income (at the time of their ini-
5 tial occupancy in such project) was
6 less than 80 percent of the area me-
7 dian gross income (as of such time),
8 or

9 “(II) in the case of a project de-
10 scribed in clause (iii) or (iv) of sub-
11 paragraph (C), are units with respect
12 to which rental assistance is provided
13 under section 8 of the United States
14 Housing Act of 1937,

15 “(iii) such project was originally
16 placed in service at least 10 years before
17 the taxpayer acquired an interest in such
18 project,

19 “(iv) such project is substantially re-
20 habilitated,

21 “(v) the taxpayer acquired such tax-
22 payer’s interest in such project by pur-
23 chase, and

24 “(vi) such project was not previously
25 placed in service by the taxpayer or by any

1 person who was a related person (as de-
2 fined in section 42(d)(2)(D)(iii)) with re-
3 spect to the taxpayer as of the time pre-
4 viously placed in service.

5 “(B) DENIAL OF DOUBLE BENEFIT.—A
6 project shall not be treated as a qualified low-
7 income housing project if the taxpayer (or any
8 other person holding an interest in such
9 project) claims any benefits with respect to
10 such project under—

11 “(i) section 42 (relating to low-income
12 housing credit),

13 “(ii) the Low-Income Housing Preser-
14 vation and Resident Homeownership Act of
15 1990, or

16 “(iii) the Emergency Low-Income
17 Housing Preservation Act of 1987 pursu-
18 ant to section 604 of the Cranston-Gon-
19 zalez National Affordable Housing Act.

20 “(C) SPECIFIED HUD PROGRAMS.—For
21 purposes of subparagraph (A), a project is as-
22 sisted under a specified HUD program if such
23 project was financed by a loan or mortgage
24 which—

1 “(i) is insured or held by the Sec-
2 retary of Housing and Urban Development
3 under section 221(d)(3) of the National
4 Housing Act and bears interest at a rate
5 determined under the proviso of section
6 221(d)(5) of such Act.

7 “(ii) is insured, assisted, or held by
8 such Secretary of a State or State agency
9 under section 236 of such Act,

10 “(iii) is insured or held by such Sec-
11 retary under section 221(d)(3) of such Act
12 and receiving assistance under section 8 of
13 the United States Housing Act of 1937, or

14 “(iv) is insured or held by such Sec-
15 retary under section 221(d)(4) of the Na-
16 tional Housing Act.

17 “(D) SUBSTANTIALLY REHABILITATED.—

18 “(i) IN GENERAL.—For purposes of
19 subparagraph (A), a project is substan-
20 tially rehabilitated if the amount of the re-
21 habilitation expenditures with respect to
22 such project during the 24-month period
23 beginning on the date the taxpayer ac-
24 quired his interest in such project equals
25 or exceeds 10 percent of the aggregate ad-

1 justed bases (as of the beginning of such
2 24-month period) of the residential rental
3 property which is part of such project.

4 “(ii) REHABILITATION EXPENDI-
5 TURES.—

6 “(I) IN GENERAL.—For purposes
7 of clause (i), the term ‘rehabilitation
8 expenditures’ means amounts charge-
9 able to capital account and incurred
10 for property (or additions or improve-
11 ments to property) of a character sub-
12 ject to the allowance for depreciation
13 in connection with the rehabilitation
14 of a building. Such term shall not in-
15 clude the cost of acquiring the build-
16 ing (or any interest therein).

17 “(II) SPECIAL RULE.—An ex-
18 penditure may be taken into account
19 only if it benefits the low-income units
20 in the project at least in proportion to
21 the total number of units in such
22 project which are low-income units.
23 For purposes of the preceding sen-
24 tence, the term ‘low-income units’
25 means units with respect to which the

1 requirements of subparagraph (A)(ii)
2 are met.

3 “(E) INCOME DETERMINATIONS.—For
4 purposes of subparagraph (A), income of indi-
5 viduals and area median gross income shall be
6 determined as provided in section 142(d)(2)(B).

7 “(F) PURCHASE.—For purposes of sub-
8 paragraph (A), the term ‘purchase’ has the
9 meaning given to such term by section
10 179(d)(2); except that such term shall not in-
11 clude any acquisition where the basis of the
12 property acquired is determined in whole or in
13 part by reference to the basis of other property
14 held at any time by the person acquiring the
15 property.”.

16 **SEC. 3. EXEMPTION FROM PASSIVE LOSS LIMITATIONS.**

17 Section 469 of the Internal Revenue Code of 1986
18 (relating to limitation on passive activity losses and cred-
19 its) is amended—

20 (1) by redesignating subsections (j), (k), (l),
21 and (m) as subsections (k), (l), (m), and (n), respec-
22 tively, and

23 (2) by inserting after subsection (i) the follow-
24 ing new subsection:

1 “(j) \$50,000 OFFSET FOR CERTAIN LOW-INCOME
2 HOUSING ACTIVITIES.—

3 “(1) IN GENERAL.—Subsection (a) shall not
4 apply to that portion of the passive activity loss for
5 any taxable year which is attributable to rental ac-
6 tivities with respect to residential rental property
7 which is part of a qualified low-income housing
8 project (as defined in section 168(i)(14)).

9 “(2) DOLLAR LIMITATION.—The aggregate
10 amount to which paragraph (1) applies for any tax-
11 able year shall not exceed \$50,000 (\$25,000 in the
12 case if a separate return by a married individual).

13 “(3) COORDINATION WITH SUBSECTION (i).—
14 This subsection shall be applied before the applica-
15 tion of subsection (i).”.

16 **SEC. 4. MINIMUM TAX TREATMENT.**

17 (a) GENERAL RULE.—Paragraph (1) of section 56(a)
18 of the Internal Revenue Code of 1986 (relating to depre-
19 ciation deduction) is amended—

20 (1) by redesignating subparagraphs (C) and
21 (D) as subparagraphs (D) and (E), respectively, and

22 (2) by inserting after subparagraph (B) the fol-
23 lowing new subparagraph:

24 “(C) SPECIAL RULE FOR CERTAIN LOW-
25 INCOME HOUSING PROJECTS.—In the case of

1 residential rental property which is part of a
2 qualified low-income housing project (as defined
3 in section 168(i)(14))—

4 “(i) the depreciation deduction with
5 respect to 50 percent of the adjusted basis
6 of such property shall be determined as
7 provided in subparagraph (A), and

8 “(ii) the depreciation deduction with
9 respect to the other 50 percent of such ad-
10 justed basis shall be determined under the
11 method applicable in computing the regu-
12 lar tax.”.

13 (b) CONFORMING AMENDMENT.—Clause (i) of sec-
14 tion 56(g)(4)(A) of such Code is amended by inserting be-
15 fore the period at the end thereof the following: “or, if
16 applicable, the rules of subsection (a)(1)(C)”.

17 **SEC. 5. EFFECTIVE DATE.**

18 The amendments made by this section shall apply to
19 property placed in service after December 31, 1994.

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