

104TH CONGRESS
1ST SESSION

H. R. 2095

To amend the Internal Revenue Code to provide that capital gains not be recognized if invested in certain small businesses.

IN THE HOUSE OF REPRESENTATIVES

JULY 21, 1995

Ms. FURSE introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code to provide that capital gains not be recognized if invested in certain small businesses.

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. NONRECOGNITION OF GAIN WHERE ROLLOVER**
4 **TO SMALL BUSINESS INVESTMENTS.**

5 (a) IN GENERAL.—Part III of subchapter O of chap-
6 ter 1 of the Internal Revenue Code of 1986 (relating to
7 common nontaxable exchanges) is amended by adding at
8 the end the following new section:

1 **“SEC. 1045. ROLLOVER OF GAIN TO SMALL BUSINESS IN-**
2 **VESTMENTS.**

3 “(a) NONRECOGNITION OF GAIN.—In the case of the
4 sale of any capital asset with respect to which the taxpayer
5 elects the application of this section, gain from such sale
6 shall be recognized only to the extent that the amount re-
7 alized on such sale exceeds—

8 “(1) the cost of any eligible small business in-
9 vestment purchased by the taxpayer during the 12-
10 month period beginning on the date of such sale, re-
11 duced by

12 “(2) any portion of such cost previously taken
13 into account under this section.

14 “(b) DEFINITIONS AND SPECIAL RULES.—For pur-
15 poses of this section—

16 “(1) CAPITAL ASSET.—The term ‘capital asset’
17 has the meaning given such term by section 1221
18 (determined without regard to paragraph (2) of such
19 section), except that such term shall include gain de-
20 rived from the bulk sale of inventory not in the ordi-
21 nary course of a trade or business.

22 “(2) INVESTMENT PROPERTY.—The term ‘in-
23 vestment property’ means property that has the ca-
24 pacity to produce gross income from—

1 “(A) interest, annuities, or royalties, not
2 derived in the ordinary course of a trade or
3 business, or

4 “(B) dividends.

5 Such term shall not include expansion shares.

6 “(3) PURCHASE.—The term ‘purchase’ has the
7 meaning given such term by section 1043(b)(4).

8 “(4) ELIGIBLE SMALL BUSINESS INVEST-
9 MENT.—Except as otherwise provided in this sec-
10 tion, the term ‘eligible small business investment’
11 means any stock in a domestic corporation, and any
12 partnership interest in a domestic partnership, if—

13 “(A) as of the date of issuance of such
14 stock or partnership interest, such corporation
15 or partnership is a qualified small business en-
16 tity, and

17 “(B) such stock or partnership interest is
18 acquired by the taxpayer at its original issue
19 (directly or through an underwriter) in ex-
20 change for money or other property (not includ-
21 ing stock).

22 A rule similar to the rule of section 1202(c)(3) shall
23 apply for purposes of this section.

24 “(5) QUALIFIED SMALL BUSINESS ENTITY.—

1 “(A) IN GENERAL.—The term ‘qualified
2 small business entity’ means any domestic cor-
3 poration or partnership if—

4 “(i) for the taxable year of such entity
5 in which the stock or partnership interest
6 was issued and each prior taxable year,
7 such entity (and any predecessor thereof)
8 had gross receipts of less than \$5,000,000,

9 “(ii) the primary activity of such en-
10 tity (and any predecessor thereof) for the
11 taxable year of such issuance and each
12 prior taxable year was an activity listed in
13 the Standard Industrial Classification
14 Manual, 1987 (SIC), as published by the
15 Office of Management and Budget, Execu-
16 tive Office of the President, as being—

17 “(I) agriculture, forestry or fish-
18 ing (Division A),

19 “(II) mining (Division B),

20 “(III) construction (Division C),

21 “(IV) manufacturing (Division
22 D),

23 “(V) transportation, communica-
24 tions, electric, gas or sanitary service
25 (Division E),

1 “(VI) wholesale trade (Division
2 F),

3 “(VII) retail trade (Division (G),

4 “(VIII) personal services (Major
5 Group 72, Division I),

6 “(IX) business services (Major
7 Group 73, Division I),

8 “(X) automotive repair, services
9 or parking (Major Group 75, Division
10 I),

11 “(XI) miscellaneous repair serv-
12 ices (Major Group 76, Division I), or

13 “(XII) engineering, accounting,
14 research, management or related serv-
15 ices (Major Group 87, Division I),

16 “(iii) such entity generates income
17 from investment property only as an inci-
18 dental effect of the management of a work-
19 ing capital pool aggregated and directed
20 toward investing in any qualified small
21 business entity, and

22 “(iv) the majority of full-time employ-
23 ees employed by such entity and the larg-
24 est percentage, by dollar value, of inde-

1 pendent contractors under contract to such
2 entity are located in the United States.

3 For purposes of clause (iii), ownership interests
4 in entities controlled by such entity or directly
5 involved in the primary activity referred to in
6 clause (ii) with respect to such entity do not
7 constitute investment property, and the Sec-
8 retary may further define by regulation what
9 constitutes an incidental holding of investment
10 property.

11 “(B) AGGREGATION RULES.—All persons
12 treated as a single employer under subsection
13 (a) or (b) of section 52 shall be treated as one
14 person for purposes of subparagraph (A).

15 “(C) SPECIAL RULES FOR DETERMINING
16 GROSS RECEIPTS.—The rules of subparagraphs
17 (B) and (C) of section 448(c)(3) shall apply for
18 purposes of subparagraph (A)(i).

19 “(c) INAPPLICABILITY TO CERTAIN GAIN.—Sub-
20 section (a) shall not apply to any of the following types
21 of gain:

22 “(1) Gain from the sale or other disposition of
23 property received in lieu of salary, wages, or other
24 compensation for services performed by the tax-

1 payer, to the extent of the fair market value of the
2 property at the time of receipt by the taxpayer.

3 “(2) Gain from the sale of property that is not
4 held for the production of income.

5 “(3) Gain from investment property.

6 “(4) Gain that is treated or characterized as or-
7 dinary income for purposes of this title.

8 “(5) Gain, to the extent the gain is not recog-
9 nized under section 1044 or 1202, notwithstanding
10 that the gain is derived from the sale of expansion
11 shares.

12 “(d) CERTAIN OTHER RULES TO APPLY.—Rules
13 similar to the rules of subsections (f), (g), (h), and (j)
14 of section 1202 (without regard to any 5-year holding pe-
15 riod requirement) shall apply for purposes of this section.

16 “(e) PROHIBITION OF BASIS ADJUSTMENTS.—If gain
17 from any sale is not recognized by reason of subsection
18 (a), such gain shall not be applied to reduce the basis for
19 determining gain or loss of any eligible small business in-
20 vestment which is purchased by the taxpayer during the
21 12-month period described in subsection (a).

22 “(f) STATUTE OF LIMITATIONS.—If any gain is real-
23 ized by the taxpayer on the sale or exchange of any eligible
24 small business investment and there is in effect an election
25 under subsection (a) with respect to such gain, then—

1 “(1) the statutory period for the assessment of
2 any deficiency with respect to such gain shall not ex-
3 pire before the expiration of 3 years from the date
4 the Secretary is notified by the taxpayer (in such
5 manner as the Secretary may by regulations pre-
6 scribe) of—

7 “(A) the taxpayer’s cost of purchasing the
8 eligible small business investment which the
9 taxpayer claims results in nonrecognition of any
10 part of such gain,

11 “(B) the taxpayer’s intention not to pur-
12 chase any eligible small business investment
13 within the 12-month period described in sub-
14 section (a), or

15 “(C) a failure to make such purchase with-
16 in such 12-month period, and

17 “(2) such deficiency may be assessed before the
18 expiration of such 3-year period notwithstanding the
19 provisions of any other law or rule of law which
20 would otherwise prevent such assessment.

21 “(g) REGULATIONS.—The Secretary shall prescribe
22 such regulations as may be appropriate to carry out the
23 purposes of this section, including regulations to prevent
24 the avoidance of the purposes of this section through
25 splitups, shell corporations, partnerships, or otherwise.

1 “(h) TERMINATION.—Subsection (a) shall not apply
2 to any taxable year beginning on or after January 1,
3 2003.”

4 (b) REPORT BY SECRETARY.—Not later than Decem-
5 ber 31, 2001, the Secretary of the Treasury shall submit
6 to each House of the Congress a report detailing the ef-
7 fects of section 1045 of such Code, as added by this Act.

8 (c) CLERICAL AMENDMENT.—The table of sections
9 for part III of subchapter O of chapter 1 of such Code
10 is amended by adding at the end the following new item:

“Sec. 1045. Rollover of gain to small business investments.”

11 (d) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to investments purchased after the
13 date of the date of the enactment of this Act, for taxable
14 years ending after such date and before January 1, 2003.

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