

105TH CONGRESS  
2D SESSION

# H. R. 4852

To amend the Internal Revenue Code of 1986 to provide that the transfer of property subject to a liability shall be treated in the same manner as the transfer of property involving an assumption of liability.

---

## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 19, 1998

Mr. ARCHER introduced the following bill; which was referred to the  
Committee on Ways and Means

---

## A BILL

To amend the Internal Revenue Code of 1986 to provide that the transfer of property subject to a liability shall be treated in the same manner as the transfer of property involving an assumption of liability.

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. PROPERTY SUBJECT TO A LIABILITY TREATED**  
4 **IN SAME MANNER AS ASSUMPTION OF LI-**  
5 **ABILITY.**

6 (a) REPEAL OF PROPERTY SUBJECT TO A LIABILITY  
7 TEST.—

1           (1) SECTION 357.—Section 357(a)(2) of the In-  
2           ternal Revenue Code of 1986 (relating to assump-  
3           tion of liability) is amended by striking “, or ac-  
4           quires from the taxpayer property subject to a liabil-  
5           ity”.

6           (2) SECTION 358.—Section 358(d)(1) of such  
7           Code (relating to assumption of liability) is amended  
8           by striking “or acquired from the taxpayer property  
9           subject to a liability”.

10          (3) SECTION 368.—

11                 (A) Section 368(a)(1)(C) of such Code is  
12                 amended by striking “, or the fact that prop-  
13                 erty acquired is subject to a liability,”.

14                 (B) The last sentence of section  
15                 368(a)(2)(B) of such Code is amended by strik-  
16                 ing “, and the amount of any liability to which  
17                 any property acquired from the acquiring cor-  
18                 poration is subject,”.

19          (b) CLARIFICATION OF ASSUMPTION OF LIABIL-  
20          ITY.—

21                 (1) IN GENERAL.—Section 357 of the Internal  
22                 Revenue Code of 1986 is amended by adding at the  
23                 end the following new subsection:

24                 “(d) DETERMINATION OF AMOUNT OF LIABILITY AS-  
25                 SUMED.—

1           “(1) IN GENERAL.—For purposes of this sec-  
2           tion, section 358(d), section 362(d), section  
3           368(a)(1)(C), and section 368(a)(2)(B), except as  
4           provided in regulations—

5                   “(A) a recourse liability (or portion there-  
6                   of) shall be treated as having been assumed if,  
7                   as determined on the basis of all facts and cir-  
8                   cumstances, the transferee has agreed to, and is  
9                   expected to, satisfy such liability (or portion),  
10                  whether or not the transferor has been relieved  
11                  of such liability; and

12                   “(B) except to the extent provided in para-  
13                   graph (2), a nonrecourse liability shall be treat-  
14                   ed as having been assumed by the transferee of  
15                   any asset subject to such liability.

16           “(2) EXCEPTION FOR NONRECOURSE LIABIL-  
17           ITY.—The amount of the nonrecourse liability treat-  
18           ed as described in paragraph (1)(B) shall be reduced  
19           by the lesser of—

20                   “(A) the amount of such liability which an  
21                   owner of other assets not transferred to the  
22                   transferee and also subject to such liability has  
23                   agreed with the transferee to, and is expected  
24                   to, satisfy, or

1           “(B) the fair market value of such other  
2           assets (determined without regard to section  
3           7701(g)).

4           “(3) REGULATIONS.—The Secretary shall pre-  
5           scribe such regulations as may be necessary to carry  
6           out the purposes of this subsection and section  
7           362(d). The Secretary may also prescribe regula-  
8           tions which provide that the manner in which a li-  
9           ability is treated as assumed under this subsection  
10          is applied, where appropriate, elsewhere in this  
11          title.”

12          (2) LIMITATION ON BASIS INCREASE ATTRIB-  
13          UTABLE TO ASSUMPTION OF LIABILITY.—Section  
14          362 of such Code is amended by adding at the end  
15          the following new subsection:

16          “(d) LIMITATION ON BASIS INCREASE ATTRIB-  
17          UTABLE TO ASSUMPTION OF LIABILITY.—

18                 “(1) IN GENERAL.—In no event shall the basis  
19                 of any property be increased under subsection (a) or  
20                 (b) above the fair market value of such property (de-  
21                 termined without regard to section 7701(g)) by rea-  
22                 son of any gain recognized to the transferor as a re-  
23                 sult of the assumption of a liability.

24                 “(2) TREATMENT OF GAIN NOT SUBJECT TO  
25                 TAX.—Except as provided in regulations, if—

1           “(A) gain is recognized to the transferor as  
2           a result of an assumption of a nonrecourse li-  
3           ability by a transferee which is also secured by  
4           assets not transferred to such transferee; and

5           “(B) no person is subject to tax under this  
6           title on such gain,

7           then, for purposes of determining basis under sub-  
8           sections (a) and (b), the amount of gain recognized  
9           by the transferor as a result of the assumption of  
10          the liability shall be determined as if the liability as-  
11          sumed by the transferee equaled such transferee’s  
12          ratable portion of such liability determined on the  
13          basis of the relative fair market values (determined  
14          without regard to section 7701(g)) of all of the as-  
15          sets subject to such liability.”.

16          (c) APPLICATION TO PROVISIONS OTHER THAN SUB-  
17          CHAPTER C.—

18                 (1) SECTION 584.—Section 584(h)(3) of the In-  
19                 ternal Revenue Code of 1986 is amended—

20                         (A) by striking “, and the fact that any  
21                         property transferred by the common trust fund  
22                         is subject to a liability,” in subparagraph (A);  
23                         and

24                         (B) by striking clause (ii) of subparagraph  
25                         (B) and inserting:

1                   “(ii) ASSUMED LIABILITIES.—For  
2                   purposes of clause (i), the term ‘assumed  
3                   liabilities’ means any liability of the com-  
4                   mon trust fund assumed by any regulated  
5                   investment company in connection with the  
6                   transfer referred to in paragraph (1)(A).

7                   “(C) ASSUMPTION.—For purposes of this  
8                   paragraph, in determining the amount of any li-  
9                   ability assumed, the rules of section 357(d)  
10                  shall apply.”

11                  (2) SECTION 1031.—The last sentence of section  
12                  1031(d) of such Code is amended—

13                         (A) by striking “assumed a liability of the  
14                         taxpayer or acquired from the taxpayer prop-  
15                         erty subject to a liability” and inserting “as-  
16                         sumed (as determined under section 357(d)) a  
17                         liability of the taxpayer”; and

18                         (B) by striking “or acquisition (in the  
19                         amount of the liability)”.

20                  (d) CONFORMING AMENDMENTS.—

21                         (1) Section 351(h)(1) of the Internal Revenue  
22                         Code of 1986 is amended by striking “, or acquires  
23                         property subject to a liability,”.

1           (2) Section 357 of such Code is amended by  
2 striking “or acquisition” each place it appears in  
3 subsection (a) or (b).

4           (3) Section 357(b)(1) of such Code is amended  
5 by striking “or acquired”.

6           (4) Section 357(c)(1) of such Code is amended  
7 by striking “, plus the amount of the liabilities to  
8 which the property is subject,”.

9           (5) Section 357(c)(3) of such Code is amended  
10 by striking “or to which the property transferred is  
11 subject”.

12           (6) Section 358(d)(1) of such Code is amended  
13 by striking “or acquisition (in the amount of the li-  
14 ability)”.

15           (e) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to transfers after October 18,  
17 1998.

○