

105TH CONGRESS
1ST SESSION

S. 854

To amend the Internal Revenue Code of 1986 to provide a reduction in the capital gains tax for assets held more than 2 years, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 9, 1997

Mr. GREGG (for himself, Mr. FORD, Mr. GRAHAM, and Mr. HAGEL) 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 a reduction in the capital gains tax for assets held more than 2 years, and for other purposes.

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; AMENDMENT OF 1986 CODE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Long-Term Investment Incentive Act of 1997”.

6 (b) AMENDMENT OF 1986 CODE.—Except as other-
7 wise expressly provided, whenever in this Act an amend-
8 ment or repeal is expressed in terms of an amendment
9 to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-
 2 sion of the Internal Revenue Code of 1986.

3 **SEC. 2. REDUCTION OF TAX ON LONG-TERM CAPITAL GAINS**
 4 **ON ASSETS HELD MORE THAN 2 YEARS.**

5 (a) IN GENERAL.—Part I of subchapter P of chapter
 6 1 (relating to treatment of capital gains) is amended by
 7 redesignating section 1202 as section 1203 and by insert-
 8 ing after section 1201 the following new section:

9 **“SEC. 1202. CAPITAL GAINS DEDUCTION FOR ASSETS HELD**
 10 **BY NONCORPORATE TAXPAYERS MORE THAN**
 11 **2 YEARS.**

12 “(a) GENERAL RULE.—If a taxpayer other than a
 13 corporation has a net capital gain for any taxable year,
 14 there shall be allowed as a deduction an amount equal to
 15 the sum of the applicable percentages of the classes of net
 16 capital gain described in the table under subsection (b).

17 “(b) APPLICABLE PERCENTAGE.—For purposes of
 18 this subsection, the applicable percentage shall be the per-
 19 centage determined in accordance with the following table:

“In the case of:	The applicable percentage is:
2-year gain	7.145
3-year gain	14.29
4-year gain	21.45
5-year gain	28.57
6-year gain	35.71
7-year gain	42.86
8-year gain	50.00.

20 “(c) GAIN TO WHICH DEDUCTION APPLIES.—For
 21 purposes of this section—

1 “(1) 2-YEAR GAIN.—The term ‘2-year gain’
2 means the lesser of—

3 “(A) the net capital gain for the taxable
4 year, or

5 “(B) the amount of long-term capital gain
6 which would be computed for the taxable year
7 if only gain from the sale or exchange of prop-
8 erty held by the taxpayer for more than 2 years
9 but not more than 3 years were taken into ac-
10 count.

11 “(2) 3-YEAR GAIN, ETC.—The terms ‘3-, 4-,
12 5-, 6-, or 7-year gain’ mean the amounts determined
13 under paragraph (1)—

14 “(A) by reducing the amount of the net
15 capital gain under subparagraph (A) thereof by
16 an amount equal to the long-term capital gain
17 from the sale or exchange of property with a
18 holding period less than the minimum holding
19 period for any such category, and

20 “(B) by substituting 3, 4, 5, 6, or 7 years
21 for 2 years and 4, 5, 6, 7, or 8 years for 3
22 years, respectively, in subparagraph (B) there-
23 of.

24 “(3) 8-YEAR GAIN.—The term ‘8-year gain’
25 means the lesser of—

1 “(A) the net capital gain for the taxable
2 year, reduced by in the same manner as under
3 paragraph (2)(A), or

4 “(B) the amount of the long-term capital
5 gain which would be computed for the taxable
6 year if only gain from the sale or exchange of
7 property held by the taxpayer for more than 8
8 years were taken into account.

9 “(d) ESTATES AND TRUSTS.—In the case of an es-
10 tate or trust, the deduction under subsection (a) shall be
11 computed by excluding the portion (if any) of the gains
12 for the taxable year from sales or exchanges of capital as-
13 sets which, under sections 652 and 662 (relating to inclu-
14 sions of amounts in gross income of beneficiaries of
15 trusts), is includible by the income beneficiaries as gain
16 derived from the sale or exchange of capital assets.

17 “(e) COORDINATION WITH TREATMENT OF CAPITAL
18 GAIN UNDER LIMITATION ON INVESTMENT INTEREST.—
19 For purposes of this section, the net capital gain for any
20 taxable year shall be reduced (but not below zero) by the
21 amount which the taxpayer takes into account as invest-
22 ment income under section 163(d)(4)(B)(iii).

23 “(f) TREATMENT OF COLLECTIBLES.—

24 “(1) IN GENERAL.—Solely for purposes of this
25 section, any gain or loss from the sale or exchange

1 of a collectible shall be treated as a short-term cap-
2 ital gain or loss (as the case may be), without regard
3 to the period such asset was held. The preceding
4 sentence shall apply only to the extent the gain or
5 loss is taken into account in computing taxable in-
6 come.

7 “(2) TREATMENT OF CERTAIN SALES OF IN-
8 TEREST IN PARTNERSHIP, ETC.—For purposes of
9 paragraph (1), any gain from the sale or exchange
10 of an interest in a partnership, S corporation, or
11 trust which is attributable to unrealized appreciation
12 in the value of collectibles held by such entity shall
13 be treated as gain from the sale or exchange of a
14 collectible. Rules similar to the rules of section
15 751(f) shall apply for purposes of the preceding sen-
16 tence.

17 “(3) COLLECTIBLE.—For purposes of this sub-
18 section, the term ‘collectible’ means any capital asset
19 which is a collectible (as defined in section 408(m))
20 without regard to paragraph (3) thereof).

21 “(g) TRANSITIONAL RULE.—

22 “(1) IN GENERAL.—Gain may be taken into ac-
23 count under subsection (c) only if such gain is prop-
24 erly taken into account on or after May 7, 1997.

1 “(2) SPECIAL RULES FOR PASS-THRU ENTI-
2 TIES.—

3 “(A) IN GENERAL.—In applying paragraph
4 (1) with respect to any pass-thru entity, the de-
5 termination of when gains and losses are prop-
6 erly taken into account shall be made at the en-
7 tity level.

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

11 “(i) a regulated investment company,

12 “(ii) a real estate investment trust,

13 “(iii) an S corporation,

14 “(iv) a partnership,

15 “(v) an estate or trust, and

16 “(vi) a common trust fund.”

17 (b) DEDUCTION ALLOWABLE IN COMPUTING AD-
18 JUSTED GROSS INCOME.—Subsection (a) of section 62 is
19 amended by inserting after paragraph (16) the following
20 new paragraph:

21 “(17) LONG-TERM CAPITAL GAINS.—The de-
22 duction allowed by section 1202.”

23 (c) MAXIMUM CAPITAL GAINS RATE.—Section 1(h)
24 is amended by adding at the end the following new sen-
25 tence: “For purposes of this subsection, taxable income

1 shall be computed without regard to the deduction allowed
2 under section 1202.”

3 (d) TREATMENT OF CERTAIN PASS-THRU ENTI-
4 TIES.—

5 (1) CAPITAL GAIN DIVIDENDS OF REGULATED
6 INVESTMENT COMPANIES.—

7 (A) Subparagraph (B) of section 852(b)(3)
8 is amended to read as follows:

9 “(B) TREATMENT OF CAPITAL GAIN DIVI-
10 DENDS BY SHAREHOLDERS.—A capital gain
11 dividend shall be treated by the shareholders as
12 gain from the sale or exchange of a capital
13 asset held for more than 1 year but not more
14 than 2 years; except that the portion of any
15 such dividend designated by the company as al-
16 locable 2-, 3-, 4-, 5-, 6-, 7-, or 8-year gain of
17 the company shall be treated as gain from the
18 sale or exchange of a capital asset held for the
19 amount of years in such class for purposes of
20 section 1202. Rules similar to the rules of sub-
21 paragraph (C) shall apply to any designation
22 under the preceding sentence.”

23 (B) Clause (i) of section 852(b)(3)(D) is
24 amended by adding at the end the following
25 new sentence: “Rules similar to the rules of

1 subparagraph (B) shall apply in determining
2 character of the amount to be so included by
3 any such shareholder.”

4 (2) CAPITAL GAIN DIVIDENDS OF REAL ESTATE
5 INVESTMENT TRUSTS.—Subparagraph (B) of section
6 857(b)(3) is amended to read as follows:

7 “(B) TREATMENT OF CAPITAL GAIN DIVI-
8 DENDS BY SHAREHOLDERS.—A capital gain
9 dividend shall be treated by the shareholders or
10 holders of beneficial interests as gain from the
11 sale or exchange of a capital asset held for
12 more than 1 year but not more than 2 years;
13 except that the portion of any such dividend
14 designated by the company as allocable to 2-, 3-
15 , 4-, 5-, 6-, 7-, or 8-year gain of the company
16 shall be treated as gain from the sale or ex-
17 change of a capital asset held for the amount
18 of years in such class for purposes of section
19 1202. Rules similar to the rules of subpara-
20 graph (C) shall apply to any designation under
21 the preceding sentence.”

22 (3) COMMON TRUST FUNDS.—Subsection (c) of
23 section 584 is amended—

1 (A) by inserting “and not more than 2
2 years” after “1 year” each place it appears in
3 paragraph (2),

4 (B) by striking “and” at the end of para-
5 graph (2), and

6 (C) by redesignating paragraph (3) as
7 paragraph (4) and inserting after paragraph
8 (2) the following new paragraph:

9 “(3) as part of its gains from sales or ex-
10 changes of capital assets held for periods described
11 in the classes of gains under section 1202(c), its
12 proportionate share of the gains of the common
13 trust fund from sales or exchanges of capital assets
14 held for such periods, and”.

15 (e) TECHNICAL AND CONFORMING CHANGES.—

16 (1) Subparagraph (B) of section 170(e)(1) is
17 amended by inserting “(or, in the case of a taxpayer
18 other than a corporation, the percentage of such
19 gain equal to 100 percent minus the percentage ap-
20 plicable to such gain under section 1202(a))” after
21 “the amount of gain”.

22 (2) Subparagraph (B) of section 172(d)(2) is
23 amended to read as follows:

1 “(B) the deduction under section 1202 and
2 the exclusion under section 1203 shall not be
3 allowed.”

4 (3)(A) Section 221 (relating to cross reference)
5 is amended to read as follows:

6 **“SEC. 221. CROSS REFERENCES.**

7 “(1) For deduction for net capital gains in the case
8 of a taxpayer other than a corporation, see section 1202.

9 “(2) For deductions in respect of a decedent, see sec-
10 tion 691.”

11 (B) The table of sections for part VII of sub-
12 chapter B of chapter 1 is amended by striking “ref-
13 erence” in the item relating to section 221 and in-
14 serting “references”.

15 (4) The last sentence of section 453A(c)(3) is
16 amended by striking all that follows “long-term cap-
17 ital gain,” and inserting “the maximum rate on net
18 capital gain under section 1(h) or 1201 or the de-
19 duction under section 1202 (whichever is appro-
20 priate) shall be taken into account.”

21 (5) Paragraph (4) of section 642(c) is amended
22 to read as follows:

23 “(4) ADJUSTMENTS.—To the extent that the
24 amount otherwise allowable as a deduction under
25 this subsection consists of gain from the sale or ex-

1 change of capital assets held for more than 1 year,
2 proper adjustment shall be made for any deduction
3 allowable to the estate or trust under section 1202
4 or any exclusion allowable to the estate or trust
5 under section 1203(a). In the case of a trust, the de-
6 duction allowed by this subsection shall be subject to
7 section 681 (relating to unrelated business income).”

8 (6) The last sentence of paragraph (3) of sec-
9 tion 643(a) is amended to read as follows: “The de-
10 duction under section 1202 and the exclusion under
11 section 1203 shall not be taken into account.”

12 (7) Subparagraph (C) of section 643(a)(6) is
13 amended by inserting “(i)” before “there shall” and
14 by inserting before the period “, and (ii) the deduc-
15 tion under section 1202 (relating to capital gains de-
16 duction) shall not be taken into account”.

17 (8) Paragraph (4) of section 691(c) is amended
18 by striking “sections 1(h), 1201, and 1211” and in-
19 serting “sections 1(h), 1201, 1202, and 1211”.

20 (9) The second sentence of section 871(a)(2) is
21 amended by inserting “or 1203” after “1202”.

22 (10) Subsection (d) of section 1044 is amended
23 by striking “1202” and inserting “1203”.

24 (11) Paragraph (1) of section 1402(i) is amend-
25 ed by inserting “, and the deduction provided by sec-

1 tion 1202 shall not apply” before the period at the
2 end thereof.

3 (f) CLERICAL AMENDMENT.—The table of sections
4 for part I of subchapter P of chapter 1 is amended by
5 inserting after the item relating to section 1201 the follow-
6 ing new item:

“Sec. 1202. Capital gains deduction for assets held by noncor-
porate taxpayers more than 2 years.”

7 (g) EFFECTIVE DATE.—

8 (1) IN GENERAL.—Except as otherwise pro-
9 vided in this subsection, the amendments made by
10 this section shall apply to taxable years ending on
11 and after May 7, 1997.

12 (2) CONTRIBUTIONS.—The amendment made
13 by subsection (e)(1) shall apply to contributions on
14 or after May 7, 1997.

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