

107TH CONGRESS  
1ST SESSION

# H. R. 1728

To amend the Internal Revenue Code of 1986 to repeal the personal holding company tax.

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IN THE HOUSE OF REPRESENTATIVES

MAY 3, 2001

Mr. RANGEL 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 repeal the personal holding company tax.

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. REPEAL OF PERSONAL HOLDING COMPANY**

4 **TAX.**

5 (a) IN GENERAL.—Part II of subchapter G of chap-  
6 ter 1 of the Internal Revenue Code of 1986 (relating to  
7 personal holding companies) is hereby repealed.

8 (b) LIMITATION ON DIVIDEND RECEIVED DEDUC-  
9 TION OF CLOSELY HELD CORPORATIONS.—Section 246 of

1 such Code is amended by inserting the following at the  
2 end thereof:

3 “(f) CERTAIN CLOSELY HELD CORPORATIONS.—

4 “(1) GENERAL RULE.—In the case of a cor-  
5 poration to which this subsection applies, the deduc-  
6 tions allowed under this part for dividends (other  
7 than qualifying dividends) received during the tax-  
8 able year shall not exceed the dividends paid during  
9 such year.

10 “(2) CORPORATIONS TO WHICH PARAGRAPH (1)  
11 APPLIES.—Paragraph (1) shall apply to a corpora-  
12 tion if—

13 “(A) at least 5 percent of its gross income  
14 for the taxable year consists of dividends other  
15 than qualifying dividends, and

16 “(B) the corporation is described in section  
17 465(a)(1)(B).

18 “(3) CARRYOVER OF DISALLOWED DEDUC-  
19 TION.—The amount of deduction which is disallowed  
20 by paragraph (1) shall be allowable in the suc-  
21 ceeding taxable year in the same manner as if the  
22 dividends to which such disallowed deduction relates  
23 were received during such succeeding year.

24 “(4) QUALIFYING DIVIDENDS.—For purposes of  
25 this subsection, the term ‘qualifying dividends’ has

1 the meaning given to such term by section 243(b);  
2 except that such term shall not include any distribu-  
3 tion directly or indirectly from earnings and profits  
4 attributable to dividends which are not described in  
5 section 243(b).”

6 (c) CONFORMING AMENDMENTS.—

7 (1) Section 12(2) of such Code is amended to  
8 read as follows:

9 “(2) For accumulated earnings tax, see part I  
10 of subchapter G (sec. 531 and following).”.

11 (2) Section 26(b)(2) of such Code is amended  
12 by striking subparagraph (G) and by redesignating  
13 the succeeding subparagraphs accordingly.

14 (3) Section 30A(c) of such Code is amended by  
15 striking paragraph (3) and by redesignating para-  
16 graph (4) as paragraph (3).

17 (4) Section 41(e)(7)(E) of such Code is amend-  
18 ed by adding “and” at the end of clause (i), by  
19 striking clause (ii), and by redesignating clause (iii)  
20 as clause (ii).

21 (5) Section 56(b)(2) of such Code is amended  
22 by striking subparagraph (C) and by redesignating  
23 subparagraph (D) as subparagraph (C).

24 (6) Section 170(e)(4)(D) of such Code is  
25 amended by adding “and” at the end of clause (i),

1 by striking clause (ii), and by redesignating clause  
2 (iii) as clause (ii).

3 (7) Section 111(d) of such Code is amended to  
4 read as follows:

5 “(d) SPECIAL RULES FOR ACCUMULATED EARNINGS  
6 TAX.—In applying subsection (a) for the purpose of deter-  
7 mining the accumulated earnings tax under section 531—

8 “(1) any excluded amount under subsection (a)  
9 allowed for purposes of this subtitle (other than sec-  
10 tion 531) shall be allowed whether or not such  
11 amount resulted in a reduction of the tax under sec-  
12 tion 531 for the prior taxable year, and

13 “(2) where any excluded amount under sub-  
14 section (a) was not allowed as a deduction for the  
15 prior taxable year for purposes of this subtitle other  
16 than section 531 but was allowable for the same tax-  
17 able year under section 531, then such excluded  
18 amount shall be allowable if it did not result in a re-  
19 duction of the tax under section 531.”.

20 (8)(A) Section 316(b) of such Code is amended  
21 by striking paragraph (2) and by redesignating  
22 paragraph (3) as paragraph (2).

23 (B) Section 331(b) of such Code is amended by  
24 striking “(other than a distribution referred to in  
25 paragraph (2)(B) of section 316(b))”.

1 (9) Section 341(d) of such Code is amended—

2 (A) by striking “section 544(a)” and in-  
3 serting “section 465(f)”, and

4 (B) by inserting before the period at the  
5 end of the next to the last sentence “and such  
6 paragraph (2) shall be applied by inserting ‘by  
7 or for his partner’ after ‘his family’ ”.

8 (10) Section 381(c) of such Code is amended by  
9 striking paragraphs (14) and (17).

10 (11) Section 443(e) of such Code is amended by  
11 striking paragraph (2) and by redesignating para-  
12 graphs (3), (4), and (5) as paragraphs (2), (3), and  
13 (4), respectively.

14 (12) Section 447(g)(4)(A) of such Code is  
15 amended by striking “other than—” and all that fol-  
16 lows and inserting “other than an S corporation.”

17 (13)(A) Section 465(a)(1)(B) of such Code is  
18 amended to read as follows:

19 “(B) a C corporation which is closely  
20 held,”.

21 (B) Section 465(a)(3) of such Code is amended  
22 to read as follows:

23 “(3) CLOSELY HELD DETERMINATION.—For  
24 purposes of paragraph (1), a corporation is closely  
25 held if, at any time during the last half of the tax-

1       able year, more than 50 percent in value of its out-  
2       standing stock is owned, directly or indirectly, by or  
3       for not more than 5 individuals. For purposes of this  
4       paragraph, an organization described in section  
5       401(a), 501(c)(17), or 509(a) or a portion of a trust  
6       permanently set aside or to be used exclusively for  
7       the purposes described in section 642(c) shall be  
8       considered an individual.”

9               (C) Section 465 of such Code is amended by  
10       adding at the end the following new subsection:

11       “(f) CONSTRUCTIVE OWNERSHIP RULES.—For pur-  
12       poses of subsection (a)(3)—

13               “(1) STOCK NOT OWNED BY INDIVIDUAL.—  
14       Stock owned, directly or indirectly, by or for a cor-  
15       poration, partnership, estate, or trust shall be con-  
16       sidered as being owned proportionately by its share-  
17       holders, partners, or beneficiaries.

18               “(2) FAMILY OWNERSHIP.—An individual shall  
19       be considered as owning the stock owned, directly or  
20       indirectly, by or for his family. For purposes of this  
21       paragraph, the family of an individual includes only  
22       his brothers and sisters (whether by the whole or  
23       half blood), spouse, ancestors, and lineal descend-  
24       ants.

1           “(3) OPTIONS.—If any person has an option to  
2           acquire stock, such stock shall be considered as  
3           owned by such person. For purposes of this para-  
4           graph, an option to acquire such an option, and each  
5           one of a series of such options, shall be considered  
6           as an option to acquire such stock.

7           “(4) APPLICATION OF FAMILY AND OPTION  
8           RULES.—Paragraphs (2) and (3) shall be applied if,  
9           but only if, the effect is to make the corporation  
10          closely held under subsection (a)(3).

11          “(5) CONSTRUCTIVE OWNERSHIP AS ACTUAL  
12          OWNERSHIP.—Stock constructively owned by a per-  
13          son by reason of the application of paragraph (1) or  
14          (3), shall, for purposes of applying paragraph (1) or  
15          (2), be treated as actually owned by such person;  
16          but stock constructively owned by an individual by  
17          reason of the application of paragraph (2) shall not  
18          be treated as owned by him for purposes of again  
19          applying such paragraph in order to make another  
20          the constructive owner of such stock.

21          “(6) OPTION RULE IN LIEU OF FAMILY  
22          RULE.—If stock may be considered as owned by an  
23          individual under either paragraph (2) or (3) it shall  
24          be considered as owned by him under paragraph (3).

1           “(7) CONVERTIBLE SECURITIES.—Outstanding  
2 securities convertible into stock (whether or not con-  
3 vertible during the taxable year) shall be considered  
4 as outstanding stock if the effect of the inclusion of  
5 all such securities is to make the corporation closely  
6 held under subsection (a)(3). The requirement under  
7 the preceding sentence that all convertible securities  
8 must be included if any are to be included shall be  
9 subject to the exception that, where some of the out-  
10 standing securities are convertible only after a later  
11 date than in the case of others, the class having the  
12 earlier conversion date may be included although the  
13 others are not included, but no convertible securities  
14 shall be included unless all outstanding securities  
15 having a prior conversion date are also included.”

16           (D) Section 465(c)(7)(B) of such Code is  
17 amended by striking clause (i) and by redesignating  
18 clauses (ii) and (iii) as clauses (i) and (ii), respec-  
19 tively.

20           (E) Section 465(c)(7)(G) of such Code is  
21 amended to read as follows:

22           “(G) LOSS OF 1 MEMBER OF AFFILIATED  
23 GROUP MAY NOT OFFSET INCOME OF PERSONAL  
24 SERVICE CORPORATION.—Nothing in this para-  
25 graph shall permit any loss of a member of an

1           affiliated group to be used as an offset against  
2           the income of any other member of such group  
3           which is a personal service corporation (as de-  
4           fined in section 269A(b) but determined by sub-  
5           stituting ‘5 percent‘ for ‘10 percent‘ in section  
6           269A(b)(2)).”

7           (14) Sections 508(d), 4947, and 4948(c)(4) of  
8           such Code are each amended by striking  
9           “545(b)(2),” each place it appears.

10           (15) Section 532(b) of such Code is amended  
11           by striking paragraph (1) and by redesignating  
12           paragraphs (2), (3), and (4) as paragraphs (1), (2),  
13           and (3), respectively.

14           (16) Sections 535(b)(1) and 556(b)(1) of such  
15           Code are each amended by striking “section 541”  
16           and inserting “section 541 (as in effect before its re-  
17           peal)”.

18           (17)(A) Section 553(a)(1) of such Code is  
19           amended by striking “section 543(d)” and inserting  
20           “subsection (e)”.

21           (B) Section 553 of such Code is amended by  
22           adding at the end the following new subsection:

23           “(c) ACTIVE BUSINESS COMPUTER SOFTWARE ROY-  
24           ALTIES.—

1           “(1) IN GENERAL.—For purposes of subsection  
2 (a), the term ‘active business computer software roy-  
3 alties’ means any royalties—

4           “(A) received by any corporation during  
5 the taxable year in connection with the licensing  
6 of computer software, and

7           “(B) with respect to which the require-  
8 ments of paragraphs (2), (3), (4), and (5) are  
9 met.

10           “(2) ROYALTIES MUST BE RECEIVED BY COR-  
11 PORATION ACTIVELY ENGAGED IN COMPUTER SOFT-  
12 WARE BUSINESS.—The requirements of this para-  
13 graph are met if the royalties described in paragraph  
14 (1)—

15           “(A) are received by a corporation engaged  
16 in the active conduct of the trade or business  
17 of developing, manufacturing, or producing  
18 computer software, and

19           “(B) are attributable to computer software  
20 which—

21           “(i) is developed, manufactured, or  
22 produced by such corporation (or its prede-  
23 cessor) in connection with the trade or  
24 business described in subparagraph (A), or

1                   “(ii) is directly related to such trade  
2                   or business.

3                   “(3) ROYALTIES MUST CONSTITUTE AT LEAST  
4                   50 PERCENT OF INCOME.—The requirements of this  
5                   paragraph are met if the royalties described in para-  
6                   graph (1) constitute at least 50 percent of the ordi-  
7                   nary gross income of the corporation for the taxable  
8                   year.

9                   “(4) DEDUCTIONS UNDER SECTIONS 162 AND  
10                  174 RELATING TO ROYALTIES MUST EQUAL OR EX-  
11                  CEED 25 PERCENT OF ORDINARY GROSS INCOME.—

12                  “(A) IN GENERAL.—The requirements of  
13                  this paragraph are met if—

14                   “(i) the sum of the deductions allow-  
15                   able to the corporation under sections 162,  
16                   174, and 195 for the taxable year which  
17                   are properly allocable to the trade or busi-  
18                   ness described in paragraph (2) equals or  
19                   exceeds 25 percent of the ordinary gross  
20                   income of such corporation for such tax-  
21                   able year, or

22                   “(ii) the average of such deductions  
23                   for the 5-taxable year period ending with  
24                   such taxable year equals or exceeds 25 per-

1 cent of the average ordinary gross income  
2 of such corporation for such period.

3 If a corporation has not been in existence dur-  
4 ing the 5-taxable year period described in clause  
5 (ii), then the period of existence of such cor-  
6 poration shall be substituted for such 5-taxable  
7 year period.

8 “(B) DEDUCTIONS ALLOWABLE UNDER  
9 SECTION 162.—For purposes of subparagraph  
10 (A), a deduction shall not be treated as allow-  
11 able under section 162 if it is specifically allow-  
12 able under another section.

13 “(C) LIMITATION ON ALLOWABLE DEDUC-  
14 TIONS.—For purposes of subparagraph (A), no  
15 deduction shall be taken into account with re-  
16 spect to compensation for personal services ren-  
17 dered by the 5 individual shareholders holding  
18 the largest percentage (by value) of the out-  
19 standing stock of the corporation. For purposes  
20 of the preceding sentence individuals holding  
21 less than 5 percent (by value) of the stock of  
22 such corporation shall not be taken into ac-  
23 count.”

24 (18) Section 561(a) of such Code is amended  
25 by striking paragraph (3), by inserting “and” at the

1 end of paragraph (1), and by striking ”, and” at the  
2 end of paragraph (2) and inserting a period.

3 (19) Section 562(b) of such Code is amended to  
4 read as follows:

5 “(b) DISTRIBUTIONS IN LIQUIDATION.—Except in  
6 the case of a foreign personal holding company described  
7 in section 552—

8 “(1) in the case of amounts distributed in liq-  
9 uidation, the part of such distribution which is prop-  
10 erly chargeable to earnings and profits accumulated  
11 after February 28, 1913, shall be treated as a divi-  
12 dend for purposes of computing the dividends paid  
13 deduction, and

14 “(2) in the case of a complete liquidation occur-  
15 ring within 24 months after the adoption of a plan  
16 of liquidation, any distribution within such period  
17 pursuant to such plan shall, to the extent of the  
18 earnings and profits (computed without regard to  
19 capital losses) of the corporation for the taxable year  
20 in which such distribution is made, be treated as a  
21 dividend for purposes of computing the dividends  
22 paid deduction.

23 For purposes of paragraph (1), a liquidation includes a  
24 redemption of stock to which section 302 applies. Except  
25 to the extent provided in regulations, the preceding sen-

1 tence shall not apply in the case of any mere holding or  
2 investment company which is not a regulated investment  
3 company.”

4 (20) Section 563 of such Code is amended by  
5 striking subsection (b).

6 (21) Section 564 of such Code is hereby re-  
7 pealed.

8 (22) Section 631(c) of such Code is amended by  
9 striking “or section 545(b)(5)”.

10 (23) Section 852(b)(1) of such Code is amend-  
11 ed by striking “which is a personal holding company  
12 (as defined in section 542) or”.

13 (24)(A) Section 856(h)(1) of such Code is  
14 amended to read as follows:

15 “(1) IN GENERAL.—For purposes of subsection  
16 (a)(6), a corporation, trust, or association is closely  
17 held if the stock ownership requirement of section  
18 465(a)(3) is met.”

19 (B) Section 856(h)(3)(A)(i) of such Code is  
20 amended by striking “section 542(a)(2)” and insert-  
21 ing “section 465(a)(3)”.

22 (C) Paragraph (3) of section 856(h) of such  
23 Code is amended by striking subparagraph (B) and  
24 by redesignating subparagraphs (C) and (D) as sub-  
25 paragraphs (B) and (C), respectively.

1           (D) Subparagraph (C) of section 856(h)(3) of  
2 such Code, as redesignating by the preceding sub-  
3 paragraph, is amended by striking “subparagraph  
4 (C)” and inserting “subparagraph (B)”.

5           (25) The last sentence of section 882(e)(2) of  
6 such Code is amended to read as follows:  
7 “The preceding sentence shall not be construed to  
8 deny the credit provided by section 33 for tax with-  
9 held at source or the credit provided by section 34  
10 for certain used of gasoline.”.

11           (26) Section 936(a)(3) of such Code is amended  
12 by striking subparagraph (C), by inserting “or” at  
13 the end of subparagraph (B), and by redesignating  
14 subparagraph (D) as subparagraph (C).

15           (27) Section 992(d) of such Code is amended  
16 by striking paragraph (2) and by redesignating suc-  
17 ceeding paragraphs accordingly.

18           (28) Section 992(e) of such Code is amended by  
19 striking “and section 541 (relating to personal hold-  
20 ing company tax)”.

21           (29) Section 1202(e)(8) of such Code is amend-  
22 ed by striking “section 543(d)(1)” and inserting  
23 “section 553(c)(1)”.

24           (30) Section 1362(d)(3)(C)(iii) of such Code is  
25 amended by adding at the end the following new

1 sentence: “References to section 542 in the pre-  
2 ceding sentence shall be treated as references to  
3 such section as in effect on the day before its re-  
4 peal.”

5 (31) Section 1504(c)(2)(B) of such Code is  
6 amended by adding “and” at the end of clause (i),  
7 by striking clause (ii), and by redesignating clause  
8 (iii) as clause (ii).

9 (32) Section 2057(e)(2)(C) of such Code is  
10 amended by adding at the end the following new  
11 sentence: “References to sections 542 and 543 in  
12 the preceding sentence shall be treated as references  
13 to such sections as in effect on the day before their  
14 repeal.”

15 (33) Sections 6422 of such Code is amended by  
16 striking paragraph (3) and by redesignating para-  
17 graphs (4) through (12) and paragraphs (3) through  
18 (11), respectively.

19 (34) Section 6501 of such Code is amended by  
20 striking subsection (f).

21 (35) Section 6503(k) of such Code is amended  
22 by striking paragraph (1) and by redesignating  
23 paragraphs (2) through (5) as paragraphs (1)  
24 through (4), respectively.

1           (36) Section 6515 of such Code is amended by  
2 striking paragraph (1) and by redesignating para-  
3 graphs (2) through (6) as paragraphs (1) through  
4 (5), respectively.

5           (37) Subsections (d)(1)(B) and (e)(2) of section  
6 6662 of such Code are each amended by striking “or  
7 a personal holding company (as defined in section  
8 542)”.

9           (38) Section 6683 of such Code is hereby re-  
10 pealed.

11 (d) CLERICAL AMENDMENTS.—

12           (1) The table of parts for subchapter G of  
13 chapter 1 of such Code is amended by striking the  
14 item relating to part II.

15           (2) The table of sections for part IV of such  
16 subchapter G is amended by striking the item relat-  
17 ing to section 564.

18           (3) The table of sections for part I of sub-  
19 chapter B of chapter 68 of such Code is amended  
20 by striking the item relating to section 6683.

21 (e) EFFECTIVE DATE.—The amendments made by  
22 this Act shall apply to taxable years beginning after De-  
23 cember 31, 2001.

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