

107TH CONGRESS
1ST SESSION

H. R. 2337

To amend the Internal Revenue Code of 1986 to provide an election for a special tax treatment of certain S corporation conversions.

IN THE HOUSE OF REPRESENTATIVES

JUNE 27, 2001

Mrs. CUBIN (for herself and Mr. McINNIS) 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 an election for a special tax treatment of certain S corporation conversions.

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. ELECTION FOR SPECIAL TAX TREATMENT OF**
4 **CERTAIN S CORPORATION CONVERSIONS.**

5 (a) IN GENERAL.—Part I of subchapter S of chapter
6 1 of the Internal Revenue Code of 1986 (relating to tax
7 treatment of S corporations and their shareholders) is
8 amended by adding at the end the following new section:

1 **“SEC. 1364. ELECTION FOR SPECIAL TAX TREATMENT OF**
2 **CERTAIN S CORPORATION CONVERSIONS.**

3 “(a) IN GENERAL.—A qualified electing S corpora-
4 tion may elect the special tax treatment provided in sub-
5 section (b) for an eligible corporate conversion in the man-
6 ner set forth in subsection (e).

7 “(b) SPECIAL TAX TREATMENT.—

8 “(1) TRANSFERS TO PARTNERSHIP.—In the
9 case of transfers by a qualified electing S corpora-
10 tion to a partnership in connection with an eligible
11 corporate conversion, no gain or loss shall be recog-
12 nized by shareholders of such corporation with re-
13 spect to money or property received by the partner-
14 ship.

15 “(2) OTHER TRANSFERS.—All other distribu-
16 tions of money or property by the qualified electing
17 S corporation shall be treated as a distribution in
18 part or full payment in exchange for the stock of
19 such corporation.

20 “(c) QUALIFIED ELECTING S CORPORATION.—For
21 purposes of this section, the term ‘qualified electing S cor-
22 poration’ means a domestic corporation which—

23 “(1) has had a valid S election continuously in
24 effect for the 10 taxable years of the corporation
25 ending before the taxable year in which the election
26 under this section is made, and

1 “(2) has never made an election under this sec-
2 tion.

3 “(d) ELIGIBLE CORPORATE CONVERSION.—For pur-
4 poses of this section—

5 “(1) IN GENERAL.—The term ‘eligible cor-
6 porate conversion’ means (however effected)—

7 “(A) a transfer by a qualified electing S
8 corporation of substantially all of its assets to
9 a partnership (as defined in section 7701(a)(2))
10 for not less than 80 percent of the capital and
11 profits of the partnership in any taxable year of
12 the corporation ending on or before December
13 31, 2007,

14 “(B) the meeting of the requirement de-
15 scribed in paragraph (2) by the partnership,
16 and

17 “(C) the subsequent liquidation and dis-
18 solution of the qualified S corporation within
19 the same taxable year as the transfer.

20 “(2) CONTINUITY OF BUSINESS REQUIRE-
21 MENT.—

22 “(A) IN GENERAL.—The requirement de-
23 scribed in this paragraph is met if the partner-
24 ship described in paragraph (1)(A) either—

1 “(i) maintains the continuity of the
2 qualified electing S corporation’s business
3 for 5 consecutive taxable years following
4 the year in which the corporate conversion
5 occurs, or

6 “(ii) pays a corporate conversion re-
7 capture tax in the taxable year in which
8 the failure to maintain such continuity
9 first occurs.

10 “(B) CONTINUITY OF THE QUALIFIED
11 ELECTING S CORPORATION’S BUSINESS.—For
12 purposes of subparagraph (A)(i), the term ‘con-
13 tinuity of the qualified electing S corporation’s
14 business’ means, under all the facts and cir-
15 cumstances, either—

16 “(i) the continuation of 1 or more of
17 the S corporation’s historic lines of busi-
18 ness, or

19 “(ii) the use of a significant portion of
20 the S corporation’s historic business assets,
21 whether or not such assets have a taxable
22 basis, in the conduct of an active trade or
23 business.

24 “(C) CORPORATE CONVERSION RECAPTURE
25 TAX.—For purposes of subparagraph (A)(ii),

1 the term ‘corporate conversion recapture tax’
2 means—

3 “(i) a recomputation of the tax under
4 this subtitle of the partnership and the
5 partners as if—

6 “(I) the partnership were an S
7 corporation,

8 “(II) the stock of such S corpora-
9 tion was owned in the same manner
10 as the capital of the partnership, and

11 “(III) the S corporation were dis-
12 solved and its assets distributed to its
13 shareholders in complete liquidation
14 on the last day of the taxable year,
15 multiplied by

16 “(ii) a fraction—

17 “(I) the numerator of which is
18 the excess (if any) of 5 over the num-
19 ber of complete taxable years in which
20 the partnership maintains continuity
21 of the qualified electing S corpora-
22 tion’s business, and

23 “(II) the denominator of which
24 is 5.

1 “(d) BASIS RULES.—In the case of an eligible cor-
2 porate conversion, property in the hands of the partner-
3 ship shall have the same basis as in the hands of the quali-
4 fied electing S corporation immediately prior to the eligible
5 corporate conversion.

6 “(e) METHOD OF MAKING ELECTION.—In order to
7 elect the special tax treatment provided in subsection (b)
8 for an eligible corporate conversion, the qualified electing
9 S corporation shall file a written election claiming such
10 treatment with the timely-filed information return of the
11 S corporation for the taxable year in which the eligible
12 corporate conversion occurs.”

13 (b) CLERICAL AMENDMENT.—The table of sections
14 for such part I is amended by adding at the end the fol-
15 lowing new item:

“Sec. 1364. Election for special tax treatment of certain s cor-
 poration conversions.”

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to taxable years ending after the
18 date of the enactment of this Act.

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