

108TH CONGRESS
2D SESSION

S. 2955

To amend the Internal Revenue Code of 1986 to exclude from gross income of individual taxpayers discharges of indebtedness attributable to certain forgiven residential mortgage obligations.

IN THE SENATE OF THE UNITED STATES

OCTOBER 8, 2004

Mr. SMITH (for himself and Mr. CONRAD) 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 exclude from gross income of individual taxpayers discharges of indebtedness attributable to certain forgiven residential mortgage obligations.

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.**

4 This Act may be cited as the “Mortgage Cancellation
5 Relief Act of 2004”.

1 **SEC. 2. EXCLUSION FROM GROSS INCOME FOR CERTAIN**
 2 **FORGIVEN MORTGAGE OBLIGATIONS.**

3 (a) **IN GENERAL.**—Paragraph (1) of section 108(a)
 4 of the Internal Revenue Code of 1986 (relating to exclu-
 5 sion from gross income) is amended by striking “or” at
 6 the end of subparagraph (C), by striking the period at the
 7 end of subparagraph (D) and inserting “, or”, and by in-
 8 serting after subparagraph (D) the following new subpara-
 9 graph:

10 “(E) in the case of an individual, the in-
 11 debtedness discharged is qualified residential in-
 12 debtedness.”.

13 (b) **QUALIFIED RESIDENTIAL INDEBTEDNESS**
 14 **SHORTFALL.**—Section 108 of such Code (relating to dis-
 15 charge of indebtedness) is amended by adding at the end
 16 the following new subsection:

17 “(h) **SPECIAL RULES FOR QUALIFIED RESIDENTIAL**
 18 **INDEBTEDNESS.**—

19 “(1) **LIMITATIONS.**—

20 “(A) **IN GENERAL.**—The amount excluded
 21 under subparagraph (E) of subsection (a)(1)
 22 with respect to any qualified residential indebt-
 23 edness shall not exceed the excess (if any) of—

24 “(i) the outstanding principal amount
 25 of such indebtedness (immediately before
 26 the discharge), over

1 “(ii) the sum of—

2 “(I) the amount realized from
3 the sale of the real property securing
4 such indebtedness reduced by the cost
5 of such sale, and

6 “(II) the outstanding principal
7 amount of any other indebtedness se-
8 cured by such property.

9 “(B) OVERALL LIMITATION.—The amount
10 excluded under subparagraph (E) of subsection
11 (a)(1) with respect to any qualified residential
12 indebtedness shall not exceed \$50,000.

13 “(2) QUALIFIED RESIDENTIAL INDEBTED-
14 NESS.—

15 “(A) IN GENERAL.—The term ‘qualified
16 residential indebtedness’ means indebtedness
17 which—

18 “(i) was incurred or assumed by the
19 taxpayer in connection with real property
20 used by the taxpayer as a principal resi-
21 dence (within the meaning of section 121)
22 and is secured by such real property,

23 “(ii) is incurred or assumed to ac-
24 quire, construct, reconstruct, or substan-
25 tially improve such real property, and

1 “(iii) with respect to which such tax-
2 payer makes an election to have this para-
3 graph apply.

4 “(B) REFINANCED INDEBTEDNESS.—Such
5 term shall include indebtedness resulting from
6 the refinancing of indebtedness under subpara-
7 graph (A)(ii), but only to the extent the refi-
8 nanced indebtedness does not exceed the
9 amount of the indebtedness being refinanced.

10 “(C) EXCEPTIONS.—Such term shall not
11 include qualified farm indebtedness or qualified
12 real property business indebtedness.

13 “(3) REGULATIONS.—The Secretary may by
14 regulation provide for the disallowance of an exclu-
15 sion under this section by reason of subparagraph
16 (E) of subsection (a)(1) in cases where the failure
17 to repay the indebtedness is due to the bad faith of
18 the taxpayer.”.

19 (c) CONFORMING AMENDMENTS.—

20 (1) Paragraph (2) of section 108(a) of such
21 Code is amended—

22 (A) in subparagraph (A) by striking “and
23 (D)” and inserting “(D), and (E)”, and

24 (B) by amending subparagraph (B) to read
25 as follows:

1 “(B) INSOLVENCY EXCLUSION TAKES
2 PRECEDENCE OVER QUALIFIED FARM EXCLU-
3 SION, QUALIFIED REAL PROPERTY BUSINESS
4 EXCLUSION, AND QUALIFIED RESIDENTIAL
5 SHORTFALL EXCLUSION.—Subparagraphs (C),
6 (D), and (E) of paragraph (1) shall not apply
7 to a discharge to the extent the taxpayer is in-
8 solvent.”.

9 (2) Paragraph (1) of section 108(b) of such
10 Code is amended by striking “or (C)” and inserting
11 “(C), or (E)”.

12 (3) Subsection (b) of section 121 of such Code
13 is amended by adding at the end the following new
14 paragraph:

15 “(4) SPECIAL RULE RELATING TO DISCHARGE
16 OF INDEBTEDNESS.—The amount of gain which
17 (but for this paragraph) would be excluded from
18 gross income under subsection (a) with respect to a
19 principal residence shall be reduced by any amount
20 excluded from the gross income of the taxpayer
21 under section 108(a)(1)(E) with respect to such resi-
22 dence.”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to discharges after the date of the
3 enactment of this Act.

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