

105TH CONGRESS
2D SESSION

S. 2125

To amend the Internal Revenue Code of 1986 to provide for the tax treatment of section 42 housing cooperatives and the shareholders of such cooperatives, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 22, 1998

Mr. D'AMATO 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 for the tax treatment of section 42 housing cooperatives and the shareholders of such cooperatives, 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. TAX TREATMENT OF SECTION 42 HOUSING CO-**
4 **OPERATIVES AND SHAREHOLDERS OF SUCH**
5 **COOPERATIVES.**

6 (a) IN GENERAL.—Part III of subchapter T of chap-
7 ter 1 of the Internal Revenue Code of 1986 (relating to

1 cooperatives and their patrons) is amended by adding at
 2 the end the following new section:

3 **“SEC. 1389. SPECIAL RULES FOR SECTION 42 HOUSING CO-**
 4 **OPERATIVES AND THEIR SHAREHOLDERS.**

5 “(a) ALLOWANCE OF DEDUCTIONS AND CREDITS.—

6 “(1) NON-PATRON SHAREHOLDERS.—In the
 7 case of a section 42 housing cooperative (as defined
 8 in subsection (b)(1)), the non-patron shareholders of
 9 such cooperative shall be allowed to take into ac-
 10 count for purposes of calculating the taxable income
 11 of such shareholders the following tax items:

12 “(A) 100 percent of all low-income housing
 13 tax credits to which the section 42 housing co-
 14 operative is entitled under section 42.

15 “(B) 100 percent of all interest allowable
 16 as a deduction to the cooperative under section
 17 163 and which is incurred and accrued but un-
 18 paid by the cooperative on its indebtedness con-
 19 tracted—

20 “(i) in the acquisition, construction,
 21 alteration, rehabilitation, or maintenance
 22 of the houses or apartment buildings, or

23 “(ii) in the acquisition of the land on
 24 which the houses (or apartment buildings)
 25 are situated.

1 “(2) PATRON SHAREHOLDERS.—In the case of
2 a section 42 housing cooperative, the patron share-
3 holders of such cooperative shall be allowed a deduc-
4 tion equal to 100 percent of the amounts paid by the
5 cooperative within the taxable year for the following
6 items, except that in no event may a patron share-
7 holder deduct an amount in excess of such patron
8 shareholder’s proportionate share of such specified
9 items:

10 “(A) Real estate taxes allowable as a de-
11 duction to the cooperative under section 164
12 which are paid or incurred by the cooperative
13 on the houses or apartment buildings and on
14 the land on which such houses (or apartment
15 buildings) are situated.

16 “(B) The interest allowable as a deduction
17 to the cooperative under section 163 for the
18 taxable year and which is paid by the coopera-
19 tive during such taxable year on its indebted-
20 ness contracted—

21 “(i) in the acquisition, construction,
22 alteration, rehabilitation, or maintenance
23 of the houses or apartment buildings, or

1 “(ii) in the acquisition of the land on
2 which the houses (or apartment buildings)
3 are situated.

4 “(b) DEFINITIONS AND SPECIAL RULES.—For pur-
5 poses of this section—

6 “(1) SECTION 42 HOUSING COOPERATIVE.—The
7 term ‘section 42 housing cooperative’ means a cor-
8 poration—

9 “(A) having no more than 2 classes of
10 stock outstanding, consisting of—

11 “(i) shares of stock issued to persons
12 who make an equity contribution to the co-
13 operative but who are not residents in the
14 houses or apartment buildings owned by
15 the cooperative; and

16 “(ii) shares of stock issued to persons
17 who make an equity contribution to the co-
18 operative and who are residents in the
19 houses or apartment buildings owned by
20 the cooperative;

21 “(B) in which each of the holders of pa-
22 tron stock is entitled, solely by reason of the
23 patron’s ownership of such stock in the cooper-
24 ative, to occupy for dwelling purposes a house,

1 or an apartment in a building, owned by such
2 cooperative;

3 “(C) no shareholder of which is entitled
4 (either conditionally or unconditionally) to re-
5 ceive any distribution not out of earnings and
6 profits of the cooperative except on a complete
7 or partial liquidation of the cooperative;

8 “(D) 80 percent or more of the gross in-
9 come of which for the taxable year in which the
10 taxes and interest described in subsection (a)
11 are paid or incurred is derived from patron
12 shareholders; and

13 “(E) which is entitled to claim a low-in-
14 come housing tax credit under section 42.

15 “(2) SHAREHOLDER’S PROPORTIONATE
16 SHARE.—

17 “(A) IN GENERAL.—Except as provided in
18 subparagraph (B), the term ‘proportionate
19 share’ means that proportion which the stock of
20 the cooperative housing corporation owned by a
21 particular patron shareholder is of the total
22 outstanding patron stock of the corporation (in-
23 cluding any stock held by the corporation).

24 “(B) SPECIAL RULE WHERE ALLOCATION
25 OF TAXES OR INTEREST REFLECT COST TO

1 CORPORATION OF PATRON SHAREHOLDER'S
2 UNIT.—

3 “(i) IN GENERAL.—If, for any taxable
4 year—

5 “(I) each dwelling unit owned or
6 leased by a section 42 housing cooper-
7 ative is separately allocated a share of
8 such cooperative's real estate taxes
9 described in subsection (a)(2)(A) or a
10 share of such cooperative's interest
11 described in subsection (a)(2)(B), and

12 “(II) such allocation reasonably
13 reflects the cost to such cooperative of
14 such taxes, or of such interest, attrib-
15 utable to the shareholder's dwelling
16 unit (and such unit's share of the
17 common areas),

18 then the term ‘proportionate share’ means
19 the shares determined in accordance with
20 the allocations described in subclause (II).

21 “(ii) ELECTION BY COOPERATIVE RE-
22 QUIRED.—Clause (i) shall apply with re-
23 spect to any section 42 housing cooperative
24 only if such cooperative elects its applica-
25 tion. Such an election, once made, may be

1 revoked only with the consent of the Sec-
2 retary.

3 “(3) PRIOR APPROVAL OF OCCUPANCY.—

4 “(A) IN GENERAL.—For purposes of this
5 section, in the following cases there shall not be
6 taken into account the fact that (by agreement
7 with the section 42 housing cooperative) the
8 person or the person’s nominee may not occupy
9 the house or apartment without the prior ap-
10 proval of such cooperative:

11 “(i) In any case in which a person ac-
12 quires stock of a section 42 housing coop-
13 erative by operation of law.

14 “(ii) In any case in which a person
15 other than an individual acquires stock of
16 a section 42 housing cooperative.

17 “(iii) In any case in which the original
18 seller acquires any stock of the section 42
19 housing cooperative from the cooperative
20 not later than 1 year after the date on
21 which the apartments or houses (or lease-
22 hold interests therein) are transferred by
23 the original seller to the cooperative.

24 “(B) ORIGINAL SELLER DEFINED.—For
25 purposes of subparagraph (A)(iii), the term

1 ‘original seller’ means the person from whom
 2 the cooperative has acquired the apartments or
 3 houses (or leasehold interest therein).

4 “(4) APPLICATION OF SECTION TO MUTUAL
 5 HOUSING ASSOCIATIONS.—

6 “(A) IN GENERAL.—In the case of a sec-
 7 tion 42 housing cooperative which is a mutual
 8 housing association, this section shall be ap-
 9 plied—

10 “(i) by substituting ‘membership cer-
 11 tificates’ for ‘stock’ or ‘shares of stock’,
 12 and

13 “(ii) by substituting ‘membership cer-
 14 tificate-holders’ for ‘shareholders’.

15 “(B) MUTUAL HOUSING ASSOCIATION.—
 16 For purposes of subparagraph (A), the term
 17 ‘mutual housing association’ means a resident-
 18 controlled, State-chartered organization de-
 19 scribed in section 501(c)(3) and exempt from
 20 tax under section 501(a).

21 “(c) TREATMENT AS PROPERTY SUBJECT TO DEPRE-
 22 CIATION.—

23 “(1) IN GENERAL.—

24 “(A) BY NON-PATRON SHAREHOLDERS.—
 25 Non-patron shares of stock (within the meaning

1 of subsection (b)(1)(A)(i)) shall be treated as
2 property subject to the allowance for deprecia-
3 tion under section 167(a). Such shares of stock
4 shall be treated as residential real property for
5 purposes of determining the appropriate depre-
6 ciation method under section 168(b), the appli-
7 cable recovery period under section 168(c), and
8 the applicable convention under section 168(d).

9 “(B) BY PATRON SHAREHOLDERS.—So
10 much of the shares of stock of a patron share-
11 holder (within the meaning of subsection
12 (b)(1)(A)(ii)) as is allocable, under regulations
13 prescribed by section 216(c), to a proprietary
14 lease or right of tenancy subject to the allow-
15 ance for depreciation under section 167(a)
16 shall, to the extent such proprietary lease or
17 right of tenancy is used by such patron share-
18 holder in a trade or business or for the produc-
19 tion of income, be treated as property subject to
20 the allowance for depreciation under section
21 167(a).

22 “(2) DEDUCTION LIMITED TO ADJUSTED BASIS
23 IN STOCK.—

24 “(A) IN GENERAL.—The amount of any
25 deduction for depreciation allowable under sec-

1 tion 167(a) to a non-patron or patron share-
2 holder with respect to any stock for any taxable
3 year by reason of subparagraph (A) or (B) of
4 paragraph (1), respectively, shall not exceed the
5 adjusted basis of such stock as of the close of
6 the taxable year of the shareholder in which
7 such deduction was incurred.

8 “(B) CARRYFORWARD OF DISALLOWED
9 AMOUNT.—The amount of any deduction which
10 is not allowed by reason of subparagraph (A)
11 shall, subject to the provisions of subparagraph
12 (A), be treated as a deduction allowable under
13 section 167(a) in the succeeding taxable year.

14 “(3) NO LIMITATION ON DEDUCTION BY SEC-
15 TION 42 HOUSING COOPERATIVE.—Nothing in this
16 section shall be construed to limit or deny a deduc-
17 tion for depreciation under section 167(a) by a sec-
18 tion 42 housing cooperative with respect to property
19 owned by such cooperative and occupied by the pa-
20 tron shareholders thereof.

21 “(d) DISALLOWANCE OF DEDUCTION FOR CERTAIN
22 PAYMENTS TO THE COOPERATIVE.—No deduction shall be
23 allowed to the holder of non-patron or patron stock in a
24 section 42 housing cooperative for any amount paid or ac-
25 crued to such cooperative during any taxable year to the

1 extent that such amount is properly allocable to amounts
2 paid or incurred at any time by the cooperative which are
3 chargeable to the cooperative's capital account. The share-
4 holder's adjusted basis in the stock in the cooperative shall
5 be increased by the amount of such disallowance.

6 “(e) RESTRICTION ON THE RESALE OF PATRON
7 STOCK.—Upon the transfer of patron stock, the consider-
8 ation received by the holder of such stock shall not exceed
9 the shareholder's adjusted equity in such stock. For pur-
10 poses of this subsection, the term ‘adjusted equity’ means
11 the sum of—

12 “(1) the consideration paid for such stock by
13 the first shareholder, as adjusted by a cost-of-living
14 adjustment and any other acceptable adjustments
15 determined by the Secretary, and

16 “(2) payments made by such shareholder for
17 improvements to the house or apartment occupied by
18 the shareholder.

19 “(f) DISTRIBUTIONS BY SECTION 42 HOUSING COOP-
20 ERATIVE.—Except as provided in regulations under sec-
21 tion 216(e), no gain or loss shall be recognized on the dis-
22 tribution by a section 42 housing cooperative of a dwelling
23 unit to a holder of patron stock in such cooperative if such
24 distribution is in exchange for the shareholder's stock in

1 the cooperative and such exchange qualifies for non-
2 recognition of gain under section 1034(f).”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 42 of the Internal Revenue Code of
5 1986 (relating to low-income housing credit) is
6 amended by adding at the end the following new
7 subsection:

8 “(o) SECTION 42 HOUSING COOPERATIVES.—In the
9 case of a section 42 housing cooperative (as defined in
10 section 1389(b)(1)), the holders of the non-patron stock
11 (within the meaning of section 1389(b)(1)(A)(i)) shall be
12 entitled to any and all tax credits that would otherwise
13 be available to such cooperative under this section. Any
14 recapture of credit calculated against the section 42 hous-
15 ing cooperative under subsection (j) shall be an increase
16 in the tax under this chapter for the holders of the non-
17 patron stock in proportion to the relative holdings of such
18 stock during the period giving rise to such recapture.”.

19 (2) Section 42(g)(2)(B) of such Code is amend-
20 ed by striking “and” at the end of clause (iii), by
21 striking the period at the end of clause (iv) and in-
22 sserting “, and”, and by inserting after clause (iv)
23 the following new clause:

24 “(v) does not include any amounts
25 paid by a tenant in connection with the ac-

1 quisition or holding of any patron stock
2 (within the meaning of section
3 1389(b)(1)(A)(ii)).”.

4 (3) Section 42(i) of such Code is amended by
5 adding at the end the following new paragraph:

6 “(8) IMPACT OF SECTION 42 HOUSING CO-
7 OPERATIVE’S RIGHT OF FIRST REFUSAL TO ACQUIRE
8 STOCK OF A SECTION 42 HOUSING COOPERATIVE.—

9 “(A) IN GENERAL.—No Federal income
10 tax benefit shall fail to be allowable to a non-
11 patron or patron shareholder (within the mean-
12 ing of section 1389(b)(1)) of a section 42 hous-
13 ing cooperative (as defined in section
14 1389(b)(1)) with respect to any qualified low-
15 income building merely by reason of a right of
16 first refusal or option or both held by the sec-
17 tion 42 housing cooperative to purchase non-pa-
18 tron stock of the cooperative after the close of
19 the compliance period for a price which is not
20 less than the minimum purchase price deter-
21 mined under subparagraph (B).

22 “(B) MINIMUM PURCHASE PRICE.—For
23 purposes of subparagraph (A), the minimum
24 purchase price for the stock of a section 42
25 housing cooperative is an amount equal to the

1 present value of the remaining depreciation de-
2 ductions which would be allowable under section
3 1389(c)(1) to the holder of such stock. For pur-
4 poses of determining present value, the discount
5 rate provided in subsection (b)(2)(C)(ii) shall be
6 applicable as determined at the time of the ex-
7 ercise of such option or right of first refusal.”.

8 (4) Section 1381(a) of such Code is amended
9 by striking “and” at the end of paragraph (1), by
10 striking the period at the end of paragraph (2) and
11 inserting “, and”, and by adding at the end the fol-
12 lowing new paragraph:

13 “(3) any section 42 housing cooperative (as de-
14 fined in section 1389(b)(1)).”.

15 (5) The table of sections for part III of sub-
16 chapter T of chapter 1 of such Code is amended by
17 adding at the end the following new item:

“Sec. 1389. Special rules for section 42 housing cooperatives and their
shareholders.”.

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