

108TH CONGRESS
1ST SESSION

S. 576

To amend the Internal Revenue Code of 1986 to provide a shorter recovery period for the depreciation of certain leasehold improvements.

IN THE SENATE OF THE UNITED STATES

MARCH 7, 2003

Mr. CONRAD (for himself, Mr. NICKLES, Mr. BREAUX, Mr. HATCH, Mr. DORGAN, Mr. KYL, Mrs. LINCOLN, Mr. COCHRAN, Ms. STABENOW, Mr. FITZGERALD, Mrs. CLINTON, Mr. REID, and Mr. SUNUNU) 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 shorter recovery period for the depreciation of certain leasehold improvements.

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 “Business Property
5 Economic Revitalization Act of 2003”.

1 **SEC. 2. RECOVERY PERIOD FOR DEPRECIATION OF CER-**
 2 **TAIN LEASEHOLD IMPROVEMENTS.**

3 (a) 10-YEAR RECOVERY PERIOD.—Subparagraph
 4 (D) of section 168(e)(3) of the Internal Revenue Code of
 5 1986 (relating to 10-year property) is amended by striking
 6 “and” at the end of clause (i), by striking the period at
 7 the end of clause (ii) and inserting “, and”, and by adding
 8 at the end the following new clause:

9 “(iii) any qualified leasehold improve-
 10 ment property.”.

11 (b) QUALIFIED LEASEHOLD IMPROVEMENT PROP-
 12 erty.—Subsection (e) of section 168 of such Code is
 13 amended by adding at the end the following new para-
 14 graph:

15 “(6) QUALIFIED LEASEHOLD IMPROVEMENT
 16 PROPERTY.—

17 “(A) IN GENERAL.—The term ‘qualified
 18 leasehold improvement property’ means any im-
 19 provement to an interior portion of a building
 20 which is nonresidential real property if—

21 “(i) such improvement is made under
 22 or pursuant to a lease (as defined in sub-
 23 section (h)(7))—

24 “(I) by the lessee (or any subles-
 25 see) of such portion, or

1 “(II) by the lessor of such por-
2 tion,

3 “(ii) such portion is to be occupied ex-
4 clusively by the lessee (or any sublessee) of
5 such portion, and

6 “(iii) such improvement is placed in
7 service more than 3 years after the date
8 the building was first placed in service.

9 “(B) CERTAIN IMPROVEMENTS NOT IN-
10 CLUDED.—Such term shall not include any im-
11 provement for which the expenditure is attrib-
12 utable to—

13 “(i) the enlargement of the building,

14 “(ii) any elevator or escalator,

15 “(iii) any structural component bene-
16 fitting a common area, and

17 “(iv) the internal structural frame-
18 work of the building.

19 “(C) DEFINITIONS AND SPECIAL RULES.—
20 For purposes of this paragraph—

21 “(i) COMMITMENT TO LEASE TREAT-
22 ED AS LEASE.—A commitment to enter
23 into a lease shall be treated as a lease, and
24 the parties to such commitment shall be
25 treated as lessor and lessee, respectively.

1 “(ii) RELATED PERSONS.—A lease be-
2 tween related persons shall not be consid-
3 ered a lease. For purposes of the preceding
4 sentence, the term ‘related persons’
5 means—

6 “(I) members of an affiliated
7 group (as defined in section 1504),
8 and

9 “(II) persons having a relation-
10 ship described in subsection (b) of
11 section 267; except that, for purposes
12 of this clause, the phrase ‘80 percent
13 or more’ shall be substituted for the
14 phrase ‘more than 50 percent’ each
15 place it appears in such subsection.

16 “(D) IMPROVEMENTS MADE BY LESSOR.—

17 “(i) IN GENERAL.—In the case of an
18 improvement made by the person who was
19 the lessor of such improvement when such
20 improvement was placed in service, such
21 improvement shall be qualified leasehold
22 improvement property (if at all) only so
23 long as such improvement is held by such
24 person.

1 “(ii) EXCEPTION FOR CHANGES IN
2 FORM OF BUSINESS.—Property shall not
3 cease to be qualified leasehold improve-
4 ment property under clause (i) by reason
5 of—

6 “(I) death,

7 “(II) a transaction to which sec-
8 tion 381(a) applies,

9 “(III) a mere change in the form
10 of conducting the trade or business so
11 long as the property is retained in
12 such trade or business as qualified
13 leasehold improvement property and
14 the taxpayer retains a substantial in-
15 terest in such trade or business,

16 “(IV) the acquisition of such
17 property in an exchange described in
18 section 1031, 1033, 1038, or 1039 to
19 the extent that the basis of such prop-
20 erty includes an amount representing
21 the adjusted basis of other property
22 owned by the taxpayer or a related
23 person, or

24 “(V) the acquisition of such
25 property by the taxpayer in a trans-

1 action described in section 332, 351,
2 361, 721, or 731 (or the acquisition
3 of such property by the taxpayer from
4 the transferee or acquiring corpora-
5 tion in a transaction described in such
6 section), to the extent that the basis
7 of the property in the hands of the
8 taxpayer is determined by reference to
9 its basis in the hands of the trans-
10 feror or distributor.

11 “(iii) RELATED PERSON.—For pur-
12 poses of this subparagraph, a person (here-
13 after in this clause referred to as the ‘re-
14 lated person’) is related to any person if
15 the related person bears a relationship to
16 such person specified in section 267(b) or
17 707(b)(1), or the related person and such
18 person are engaged in trades or businesses
19 under common control (within the meaning
20 of subsections (a) and (b) of section 52).”.

21 (c) REQUIREMENT TO USE STRAIGHT LINE METH-
22 OD.—Paragraph (3) of section 168(b) of such Code is
23 amended by adding at the end the following new subpara-
24 graph:

1 “(G) Qualified leasehold improvement
2 property described in subsection (e)(6).”.

3 (d) ALTERNATIVE SYSTEM.—The table contained in
4 section 168(g)(3)(B) of such Code is amended by inserting
5 after the item relating to subparagraph (D)(ii) the fol-
6 lowing new item:

 “(D)(iii) 10”.

7 (e) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to qualified leasehold improvement
9 property placed in service after September 10, 2004.

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