

105TH CONGRESS  
2D SESSION

# H. R. 3641

To amend the Internal Revenue Code of 1986 to allow capital gain treatment on the transfer of a franchise in connection with the transfer of an existing business, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 1, 1998

Mr. BUNNING of Kentucky (for himself, Mr. HOUGHTON, and Mr. ENGLISH of Pennsylvania) 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 allow capital gain treatment on the transfer of a franchise in connection with the transfer of an existing business, 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. TREATMENT OF TRANSFERS OF FRANCHISES**

4 **IN CONNECTION WITH TRANSFER OF EXIST-**  
5 **ING BUSINESS OPERATION.**

6 (a) CAPITAL GAIN TREATMENT.—Section 1253 of  
7 the Internal Revenue Code of 1986 (relating to transfers

1 of franchises, trademarks, and trade names) is amended  
 2 by adding at the end the following new subsection:

3 “(f) EXCEPTION FOR TRANSFERS OF FRANCHISES IN  
 4 CONNECTION WITH EXISTING BUSINESS OPERATION.—

5 “(1) IN GENERAL.—Subsection (a) shall not  
 6 apply to the transfer of a franchise to an eligible  
 7 transferee if—

8 “(A) the trade or business which is the  
 9 subject matter of the franchise has been ac-  
 10 tively carried on for not less than 2 years as of  
 11 the date of the transfer,

12 “(B) the transferee acquires the right to  
 13 operate such trade or business in connection  
 14 with such transfer, and

15 “(C) the transferee and the transferor are  
 16 not related persons (as defined in section  
 17 197(f)(9)(C)).

18 “(2) ELIGIBLE TRANSFEREE.—For purposes of  
 19 paragraph (1), the term ‘eligible transferee’ means—

20 “(A) an individual,

21 “(B) any domestic corporation all of the  
 22 stock in which is owned by an individual and  
 23 the members of such individual’s family (within  
 24 the meaning of section 267(c)(4)),

25 “(C) a corporation—

1 “(i) which meets the requirements of  
 2 section 1361(b) (determined by substitut-  
 3 ing ‘35’ for ‘75’ in paragraph (1) thereof),  
 4 and

5 “(ii) which meets the requirements of  
 6 section 1202(d) (determined by treating  
 7 such transfer as the issuance referred to in  
 8 such section), or, in the case of a corpora-  
 9 tion which is not a C corporation, would  
 10 meet such requirements (as so determined)  
 11 were it a C corporation), or

12 “(D) a partnership which would meet the  
 13 requirements of subparagraph (B) or (C) if it  
 14 were a corporation and interests in the profits  
 15 or capital of the partnership were stock.”.

16 (b) EXCEPTION FROM ORDINARY INCOME RECAP-  
 17 TURE ON DISPOSITION OF AMORTIZED FRANCHISE  
 18 COST.—Paragraph (7) of section 197(f) of such Code is  
 19 amended by adding at the end the following new sentence:  
 20 “The preceding sentence shall not apply to any franchise  
 21 to which section 1253(a) does not apply by reason of sec-  
 22 tion 1253(f).”

23 (c) MAXIMUM RATE OF TAX.—Subsection (a) of sec-  
 24 tion 1201 of such Code (relating to alternative tax for cor-  
 25 porations) is amended by striking “plus” at the end of

1 paragraph (1) and by striking paragraph (2) and inserting  
2 the following new paragraphs:

3 “(2) 20 percent of the lesser of—

4 “(A) the net capital gain determined by  
5 taking into account only gain and loss attrib-  
6 utable to transfers of franchises to which sec-  
7 tion 1253(a) does not apply by reason of sec-  
8 tion 1253(f), or

9 “(B) the net capital gain (or, if less, tax-  
10 able income) for the taxable year, plus

11 “(3) 35 percent of the excess (if any) of—

12 “(A) the net capital gain (or, if less, tax-  
13 able income) for the taxable year, over

14 “(B) the amount of net capital gain taken  
15 into account under paragraph (2).”.

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

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