

105TH CONGRESS
1ST SESSION

S. 252

To amend the Internal Revenue Code of 1986 to provide a reduction in the capital gains tax for assets held more than 2 years, to impose a surcharge on short-term capital gains, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 30, 1997

Mr. GREGG 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 reduction in the capital gains tax for assets held more than 2 years, to impose a surcharge on short-term capital gains, 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. SHORT TITLE; AMENDMENT OF 1986 CODE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Long-Term Investment Incentive Act of 1997”.

6 (b) AMENDMENT OF 1986 CODE.—Except as other-
7 wise expressly provided, whenever in this Act an amend-
8 ment or repeal is expressed in terms of an amendment

1 to, or repeal of, a section or other provision, the reference
 2 shall be considered to be made to a section or other provi-
 3 sion of the Internal Revenue Code of 1986.

4 **SEC. 2. REDUCTION OF TAX ON LONG-TERM CAPITAL GAINS**
 5 **ON ASSETS HELD MORE THAN 2 YEARS.**

6 (a) IN GENERAL.—Part I of subchapter P of chapter
 7 1 (relating to treatment of capital gains) is amended by
 8 redesignating section 1202 as section 1203 and by insert-
 9 ing after section 1201 the following new section:

10 **“SEC. 1202. CAPITAL GAINS DEDUCTION FOR ASSETS HELD**
 11 **BY NONCORPORATE TAXPAYERS MORE THAN**
 12 **2 YEARS.**

13 “(a) GENERAL RULE.—If a taxpayer other than a
 14 corporation has a net capital gain for any taxable year,
 15 there shall be allowed as a deduction an amount equal to
 16 the sum of—

17 “(1) 20 percent of the qualified 4-year capital
 18 gain,

19 “(2) 10 percent of the qualified 3-year capital
 20 gain, plus

21 “(3) 5 percent of the qualified 2-year capital
 22 gain.

23 “(b) DEFINITIONS.—For purposes of this title—

1 “(1) QUALIFIED 4-YEAR CAPITAL GAIN.—The
2 term ‘qualified 4-year capital gain’ means the lesser
3 of—

4 “(A) the amount of long-term capital gain
5 which would be computed for the taxable year
6 if only gain from the sale or exchange of prop-
7 erty held by the taxpayer for more than 4 years
8 were taken into account, or

9 “(B) the net capital gain.

10 “(2) QUALIFIED 3-YEAR CAPITAL GAIN.—The
11 term ‘qualified 3-year capital gain’ means the lesser
12 of—

13 “(A) the amount of long-term capital gain
14 which would be computed for the taxable year
15 if only gain from the sale or exchange of prop-
16 erty held by the taxpayer for more than 3 years
17 but not more than 4 years were taken into ac-
18 count, or

19 “(B) the net capital gain, reduced by the
20 qualified 4-year capital gain.

21 “(3) QUALIFIED 2-YEAR CAPITAL GAIN.—The
22 term ‘qualified 2-year capital gain’ means the lesser
23 of—

24 “(A) the amount of long-term capital gain
25 which would be computed for the taxable year

1 if only gain from the sale or exchange of prop-
 2 erty held by the taxpayer for more than 2 years
 3 but not more than 3 years were taken into ac-
 4 count, or

5 “(B) the net capital gain, reduced by the
 6 qualified 4-year capital gain and qualified 3-
 7 year capital gain.

8 “(c) ESTATES AND TRUSTS.—In the case of an estate
 9 or trust, the deduction under subsection (a) shall be com-
 10 puted by excluding the portion (if any) of the gains for
 11 the taxable year from sales or exchanges of capital assets
 12 which, under sections 652 and 662 (relating to inclusions
 13 of amounts in gross income of beneficiaries of trusts), is
 14 includible by the income beneficiaries as gain derived from
 15 the sale or exchange of capital assets.

16 “(d) COORDINATION WITH TREATMENT OF CAPITAL
 17 GAIN UNDER LIMITATION ON INVESTMENT INTEREST.—
 18 For purposes of this section, the net capital gain for any
 19 taxable year shall be reduced (but not below zero) by the
 20 amount which the taxpayer takes into account as invest-
 21 ment income under section 163(d)(4)(B)(iii).

22 “(e) TREATMENT OF COLLECTIBLES.—

23 “(1) IN GENERAL.—Solely for purposes of this
 24 section, any gain or loss from the sale or exchange

1 of a collectible shall be treated as a short-term cap-
 2 ital gain or loss (as the case may be), without regard
 3 to the period such asset was held. The preceding
 4 sentence shall apply only to the extent the gain or
 5 loss is taken into account in computing taxable in-
 6 come.

7 “(2) TREATMENT OF CERTAIN SALES OF IN-
 8 TEREST IN PARTNERSHIP, ETC.—For purposes of
 9 paragraph (1), any gain from the sale or exchange
 10 of an interest in a partnership, S corporation, or
 11 trust which is attributable to unrealized appreciation
 12 in the value of collectibles held by such entity shall
 13 be treated as gain from the sale or exchange of a
 14 collectible. Rules similar to the rules of section
 15 751(f) shall apply for purposes of the preceding sen-
 16 tence.

17 “(3) COLLECTIBLE.—For purposes of this sub-
 18 section, the term ‘collectible’ means any capital asset
 19 which is a collectible (as defined in section 408(m)
 20 without regard to paragraph (3) thereof).

21 “(f) TRANSITIONAL RULE.—

22 “(1) IN GENERAL.—Gain may be taken into ac-
 23 count under subsection (b)(1)(A), (b)(2)(A), or
 24 (b)(3)(A) only if such gain is properly taken into ac-
 25 count on or after February 1, 1997.

1 “(2) SPECIAL RULES FOR PASS-THRU ENTI-
2 TIES.—

3 “(A) IN GENERAL.—In applying paragraph
4 (1) with respect to any pass-thru entity, the de-
5 termination of when gains and losses are prop-
6 erly taken into account shall be made at the en-
7 tity level.

8 “(B) PASS-THRU ENTITY DEFINED.—For
9 purposes of subparagraph (A), the term ‘pass-
10 thru entity’ means—

11 “(i) a regulated investment company,

12 “(ii) a real estate investment trust,

13 “(iii) an S corporation,

14 “(iv) a partnership,

15 “(v) an estate or trust, and

16 “(vi) a common trust fund.”

17 (b) DEDUCTION ALLOWABLE IN COMPUTING AD-
18 JUSTED GROSS INCOME.—Subsection (a) of section 62 is
19 amended by inserting after paragraph (16) the following
20 new paragraph:

21 “(17) LONG-TERM CAPITAL GAINS.—The de-
22 duction allowed by section 1202.”

23 (c) MAXIMUM CAPITAL GAINS RATE.—Clause (i) of
24 section 1(h)(1)(A), as amended by section 3(a), is amend-
25 ed by striking “the net capital gain” and inserting “the

1 excess of the net capital gain over the deduction allowed
 2 under section 1202”.

3 (d) TREATMENT OF CERTAIN PASS-THRU ENTI-
 4 TIES.—

5 (1) CAPITAL GAIN DIVIDENDS OF REGULATED
 6 INVESTMENT COMPANIES.—

7 (A) Subparagraph (B) of section 852(b)(3)
 8 is amended to read as follows:

9 “(B) TREATMENT OF CAPITAL GAIN DIVI-
 10 DENDS BY SHAREHOLDERS.—A capital gain
 11 dividend shall be treated by the shareholders as
 12 gain from the sale or exchange of a capital
 13 asset held for more than 1 year but not more
 14 than 2 years; except that—

15 “(i) the portion of any such dividend
 16 designated by the company as allocable to
 17 qualified 4-year capital gain of the com-
 18 pany shall be treated as gain from the sale
 19 or exchange of a capital asset held for
 20 more than 4 years,

21 “(ii) the portion of any such dividend
 22 designated by the company as allocable to
 23 qualified 3-year capital gain of the com-
 24 pany shall be treated as gain from the sale
 25 or exchange of a capital asset held for

more than 3 years but not more than 4 years, and

“(iii) the portion of any such dividend designated by the company as allocable to qualified 2-year capital gain of the company shall be treated as gain from the sale or exchange of a capital asset held for more than 2 years but not more than 3 years.

Rules similar to the rules of subparagraph (C) shall apply to any designation under clause (i), (ii), or (iii).”

(B) Clause (i) of section 852(b)(3)(D) is amended by adding at the end the following new sentence: “Rules similar to the rules of subparagraph (B) shall apply in determining character of the amount to be so included by any such shareholder.”

(2) CAPITAL GAIN DIVIDENDS OF REAL ESTATE INVESTMENT TRUSTS.—Subparagraph (B) of section 857(b)(3) is amended to read as follows:

“(B) TREATMENT OF CAPITAL GAIN DIVIDENDS BY SHAREHOLDERS.—A capital gain dividend shall be treated by the shareholders or holders of beneficial interests as gain from the

1 sale or exchange of a capital asset held for
2 more than 1 year but not more than 2 years;
3 except that—

4 “(i) the portion of any such dividend
5 designated by the real estate investment
6 trust as allocable to qualified 4-year capital
7 gain of the trust shall be treated as gain
8 from the sale or exchange of a capital
9 asset held for more than 4 years,

10 “(ii) the portion of any such dividend
11 designated by the trust as allocable to
12 qualified 3-year capital gain of the trust
13 shall be treated as gain from the sale or
14 exchange of a capital asset held for more
15 than 3 years but not more than 4 years,
16 and

17 “(iii) the portion of any such dividend
18 designated by the trust as allocable to
19 qualified 2-year capital gain of the trust
20 shall be treated as gain from the sale or
21 exchange of a capital asset held for more
22 than 2 years but not more than 3 years.

23 Rules similar to the rules of subparagraph (C)
24 shall apply to any designation under clause (i)
25 or (ii).”

1 (3) COMMON TRUST FUNDS.—Subsection (c) of
2 section 584 is amended—

3 (A) by inserting “and not more than 2
4 years” after “1 year” each place it appears in
5 paragraph (2),

6 (B) by striking “and” at the end of para-
7 graph (2), and

8 (C) by redesignating paragraph (3) as
9 paragraph (6) and inserting after paragraph
10 (2) the following new paragraphs:

11 “(3) as part of its gains from sales or ex-
12 changes of capital assets held for more than 2 years
13 but less than 3 years, its proportionate share of the
14 gains of the common trust fund from sales or ex-
15 changes of capital assets held for more than 2 years
16 but not more than 3 years,

17 “(4) as part of its gains from sales or ex-
18 changes of capital assets held for more than 3 years
19 but less than 4 years, its proportionate share of the
20 gains of the common trust fund from sales or ex-
21 changes of capital assets held for more than 3 years
22 but less than 4 years,

23 “(5) as part of its gains from sales or ex-
24 changes of capital assets held more than 4 years, its
25 proportionate share of the gains of the common

1 trust fund from sales or exchanges of capital assets
 2 held for more than 4 years, and”.

3 (e) TECHNICAL AND CONFORMING CHANGES.—

4 (1) Subparagraph (B) of section 170(e)(1) is
 5 amended by inserting “(or, in the case of a taxpayer
 6 other than a corporation, the percentage of such
 7 gain equal to 100 percent minus the percentage ap-
 8 plicable to such gain under section 1202(a))” after
 9 “the amount of gain”.

10 (2) Subparagraph (B) of section 172(d)(2) is
 11 amended to read as follows:

12 “(B) the deduction under section 1202 and
 13 the exclusion under section 1203 shall not be
 14 allowed.”

15 (3)(A) Section 221 (relating to cross reference)
 16 is amended to read as follows:

17 **“SEC. 221. CROSS REFERENCES.**

18 “(1) For deduction for net capital gains in the case
 19 of a taxpayer other than a corporation, see section 1202.

20 “(2) For deductions in respect of a decedent, see sec-
 21 tion 691.”

22 (B) The table of sections for part VII of sub-
 23 chapter B of chapter 1 is amended by striking “ref-
 24 erence” in the item relating to section 221 and in-
 25 serting “references”.

1 (4) The last sentence of section 453A(c)(3) is
2 amended by striking all that follows “long-term cap-
3 ital gain,” and inserting “the maximum rate on net
4 capital gain under section 1(h) or 1201 or the de-
5 duction under section 1202 (whichever is appro-
6 priate) shall be taken into account.”

7 (5) Paragraph (4) of section 642(c) is amended
8 to read as follows:

9 “(4) ADJUSTMENTS.—To the extent that the
10 amount otherwise allowable as a deduction under
11 this subsection consists of gain from the sale or ex-
12 change of capital assets held for more than 1 year,
13 proper adjustment shall be made for any deduction
14 allowable to the estate or trust under section 1202
15 or any exclusion allowable to the estate or trust
16 under section 1203(a). In the case of a trust, the de-
17 duction allowed by this subsection shall be subject to
18 section 681 (relating to unrelated business income).”

19 (6) The last sentence of paragraph (3) of sec-
20 tion 643(a) is amended to read as follows: “The de-
21 duction under section 1202 and the exclusion under
22 section 1203 shall not be taken into account.”

23 (7) Subparagraph (C) of section 643(a)(6) is
24 amended by inserting “(i)” before “there shall” and

1 by inserting before the period “, and (ii) the deduc-
 2 tion under section 1202 (relating to capital gains de-
 3 duction) shall not be taken into account”.

4 (8) Paragraph (4) of section 691(c) is amended
 5 by striking “sections 1(h), 1201, and 1211” and in-
 6 serting “sections 1(h), 1201, 1202, and 1211”.

7 (9) The second sentence of section 871(a)(2) is
 8 amended by inserting “or 1203” after “1202”.

9 (10) Subsection (d) of section 1044 is amended
 10 by striking “1202” and inserting “1203”.

11 (11) Paragraph (1) of section 1402(i) is amend-
 12 ed by inserting “, and the deduction provided by sec-
 13 tion 1202 shall not apply” before the period at the
 14 end thereof.

15 (f) CLERICAL AMENDMENT.—The table of sections
 16 for part I of subchapter P of chapter 1 is amended by
 17 inserting after the item relating to section 1201 the follow-
 18 ing new item:

“Sec. 1202. Capital gains deduction for assets held by noncor-
 porate taxpayers more than 2 years.”

19 (g) EFFECTIVE DATE.—

20 (1) IN GENERAL.—Except as otherwise pro-
 21 vided in this subsection, the amendments made by
 22 this section shall apply to taxable years ending after
 23 January 31, 1997.

1 (2) CONTRIBUTIONS.—The amendment made
 2 by subsection (e)(1) shall apply to contributions on
 3 or after February 1, 1997.

4 **SEC. 3. SURCHARGE ON CAPITAL GAINS ON ASSETS HELD**
 5 **1 YEAR OR LESS.**

6 (a) IN GENERAL.—Subsection (h) of section 1 (relat-
 7 ing to maximum capital gains rate) is amended to read
 8 as follows:

9 “(h) MAXIMUM CAPITAL GAINS TAXES.—

10 “(1) IN GENERAL.—If a taxpayer has a net
 11 capital gain for any taxable year, then the tax im-
 12 posed by this section shall not exceed the sum of—

13 “(A) a tax computed at the rates and in
 14 the same manner as if this subsection had not
 15 been enacted on the greater of—

16 “(i) taxable income reduced by the
 17 amount of net capital gain, or

18 “(ii) the amount of taxable income
 19 taxed at a rate below 28 percent, plus

20 “(B) a tax of 28 percent of the amount of
 21 taxable income in excess of the amount deter-
 22 mined under subparagraph (A).

23 For purposes of the preceding sentence, the net cap-
 24 ital gain for any taxable year shall be reduced (but
 25 not below zero) by the amount which the taxpayer

elects to take into account as investment income for
the taxable year under section 163(d)(4)(B)(iii).

“(2) SURCHARGE ON NET SHORT-TERM CAPITAL GAIN.—

“(A) IN GENERAL.—If a taxpayer has a
net short-term capital gain for any taxable year,
the tax imposed by this section (without regard
to this paragraph) shall be increased by an
amount equal to the sum of—

“(i) 5.6 percent of the taxpayer’s 6-
month short-term capital gain, plus

“(ii) 2.8 percent of the taxpayer’s 12-
month short-term capital gain.

“(B) MAXIMUM RATE.—

“(i) IN GENERAL.—Subparagraph (A)
shall not be applied to the extent it would
result in—

“(I) 6-month short-term capital
gain being taxed at a rate greater
than 33.6 percent, or

“(II) 12-month short-term capital
gain being taxed at a rate greater
than 30.8 percent.

“(ii) ORDERING RULE.—For purposes
of clause (i), the rate or rates at which 6-

month or 12-month short-term capital gain
is being taxed shall be determined as if—

“(I) such gain were taxed after
all other taxable income, and

“(II) 12-month short-term capital gain were taxed after 6-month short-term capital gain.

“(C) DEFINITIONS.—For purposes of this paragraph—

“(i) 6-MONTH SHORT-TERM CAPITAL GAIN.—The term ‘6-month short-term capital gain’ means the lesser of—

“(I) the amount of short-term capital gain which would be computed for the taxable year if only gain from the sale or exchange of property held by the taxpayer for 6 months or less were taken into account, or

“(II) net short-term capital gain.

“(ii) 12-MONTH SHORT-TERM CAPITAL GAIN.—The term ‘12-month short-term capital gain’ means the lesser of—

“(I) the amount of short-term capital gain which would be computed for the taxable year if only gain from

1 the sale or exchange of property held
2 by the taxpayer for more than 6
3 months but not more than 12 months
4 were taken into account, or

5 “(II) net short-term capital gain,
6 reduced by 6-month short-term capital
7 gain.

8 For purposes of clause (i)(I) or (ii)(I), gain
9 may be taken into account only if such gain is
10 properly taken into account on or after Feb-
11 ruary 1, 1997.”

12 (b) EFFECTIVE DATE.—The amendment made by
13 this section shall apply to taxable years ending after Janu-
14 ary 31, 1997.

○