

105TH CONGRESS
1ST SESSION

S. 635

To amend the Internal Revenue Code of 1986 to provide incentives for investments in disadvantaged and women-owned business enterprises.

IN THE SENATE OF THE UNITED STATES

APRIL 23, 1997

Mr. SPECTER 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 incentives for investments in disadvantaged and women-owned business enterprises.

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 “Minority and Women
5 Capital Formation Act of 1997”.

6 **SEC. 2. INCENTIVES FOR INVESTMENTS IN DISADVAN-**
7 **TAGED AND WOMEN-OWNED ENTERPRISES.**

8 (a) Subchapter P of chapter 1 of the Internal Reve-
9 nue Code of 1986 (relating to capital gains and losses)

1 is amended by adding at the end thereof the following new
2 part:

3 **“PART VI—INCENTIVES FOR INVESTMENTS IN**
4 **DISADVANTAGED AND WOMEN-OWNED EN-**
5 **TERPRISES**

“Subpart A. Initial investment incentives.

“Subpart B. Capital gain provisions.

“Subpart C. General provisions.

6 **“Subpart A—Initial Investment Incentives**

“Sec. 1301. Deduction for investment in minority and women
venture capital funds.

“Sec. 1302. Deduction for investment in small minority and
women’s business corporations.

“Sec. 1303. Taxpayer may elect credit in lieu of deduction.

“Sec. 1304. Recapture provisions.

7 **“SEC. 1301. DEDUCTION FOR INVESTMENT IN MINORITY**
8 **AND WOMEN VENTURE CAPITAL FUNDS.**

9 “(a) GENERAL RULE.—There shall be allowed as a
10 deduction an amount equal to the sum of the aggregate
11 bases of—

12 “(1) qualified minority fund interests, and

13 “(2) qualified women’s fund interests,

14 which are acquired by the taxpayer during the taxable year
15 at their original issuance (directly or through an under-
16 writer), and which are held by the taxpayer as of the close
17 of such taxable year.

18 “(b) LIMITATIONS.—The amount allowable as a de-
19 duction under subsection (a) (1) or (2), respectively, for

1 any taxable year shall not exceed \$300,000 (\$150,000 in
2 the case of a separate return by a married individual).

3 “(c) QUALIFIED MINORITY FUND INTEREST.—For
4 purposes of this part, the term ‘qualified minority fund
5 interest’ means any stock in a domestic corporation or
6 partnership interest in a domestic partnership if—

7 “(1) such stock or partnership interest (as the
8 case may be) is issued after the date of the enact-
9 ment of this part solely in exchange for money,

10 “(2) such corporation or partnership (as the
11 case may be) was formed exclusively for purposes
12 of—

13 “(A) acquiring at original issuance equity
14 interests in qualified minority corporations, or

15 “(B) making loans to such corporations,
16 and

17 “(3) at least 70 percent of the total bases of its
18 assets is represented by—

19 “(A) investments referred to in paragraph
20 (2), and

21 “(B) cash and cash equivalents.

22 For purposes of paragraph (2), the term ‘equity interests’
23 means stock, warrants, and convertible securities.

24 “(d) QUALIFIED WOMEN’S FUND INTEREST.—For
25 purposes of this part, the term ‘qualified women’s fund

1 interest’ shall be determined under subsection (c) by sub-
 2 stituting ‘qualified women’s corporations’ for ‘qualified
 3 minority corporations’ in paragraph (2)(B).

4 **“SEC. 1302. DEDUCTION FOR INVESTMENT IN SMALL MI-**
 5 **NORITY AND WOMEN’S BUSINESS CORPORA-**
 6 **TIONS.**

7 “(a) GENERAL RULE.—There shall be allowed as a
 8 deduction an amount equal to the sum of the aggregate
 9 bases of—

10 “(1) small minority business stock, and

11 “(2) small women’s business corporations,

12 which are acquired by the taxpayer during the taxable year
 13 at its original issuance (directly or through an under-
 14 writer), and which are held by the taxpayer as of the close
 15 of such taxable year.

16 “(b) LIMITATIONS.—

17 “(1) NONCORPORATE TAXPAYERS.—

18 “(A) IN GENERAL.—In the case of a tax-
 19 payer other than a corporation, the amount al-
 20 lowable as a deduction under subsection (a)(1)
 21 or (2), respectively, for any taxable year shall
 22 not exceed the lesser of—

23 “(i) \$50,000 (\$25,000 in the case of
 24 a separate return by a married individual),
 25 or

1 “(ii) \$500,000 (\$250,000 in the case
2 of a separate return by a married individ-
3 ual), reduced by the aggregate amount al-
4 lowable as a deduction under subsection
5 (a) (1) or (2), respectively, to the taxpayer
6 for prior taxable years.

7 “(B) CARRYOVER.—If the amount other-
8 wise deductible under subsection (a) exceeds the
9 limitation under subparagraph (A)(i) for any
10 taxable year, the amount of such excess shall
11 be treated as an amount described in subsection
12 (a) which is paid in the following taxable year.

13 “(C) SPECIAL RULE.—The amount allow-
14 able as a deduction under subparagraph (A) (i)
15 or (ii) with respect to any joint return shall be
16 allocated equally between the spouses in deter-
17 mining the limitation under subparagraph
18 (A)(ii) for any subsequent taxable year.

19 “(2) CORPORATE TAXPAYER.—In the case of a
20 corporation, the amount allowable as a deduction
21 under subsection (a) (1) or (2), respectively, for any
22 taxable year shall not exceed \$100,000.

23 “(c) SMALL MINORITY BUSINESS STOCK.—For pur-
24 poses of this part, the term ‘small minority business stock’
25 means any stock in a qualified minority corporation if—

1 “(1) as of the date of the issuance of such
2 stock, the total bases of property owned or leased by
3 such corporation does not exceed \$12,000,000,

4 “(2) such stock is issued after the date of the
5 enactment of this part solely in exchange for money,
6 and

7 “(3) such corporation elects to treat such stock
8 as small minority business stock for purposes of this
9 section.

10 An election under paragraph (3), once made, shall be ir-
11 revocable.

12 “(d) SMALL WOMEN’S BUSINESS STOCK.—For pur-
13 poses of this part, the term ‘small women’s business stock’
14 means any stock in a qualified women’s corporation if—

15 “(1) as of the date of the issuance of such
16 stock, the total bases of property owned or leased by
17 such corporation does not exceed \$12,000,000,

18 “(2) such stock is issued after the date of the
19 enactment of this part solely in exchange for money,
20 and

21 “(3) such corporation elects to treat such stock
22 as small women’s business stock for purposes of this
23 section.

24 An election under paragraph (3), once made, shall be ir-
25 revocable.

1 “(e) ISSUER LIMITATION.—The aggregate amount of
 2 stock for which an issuer may make an election under sub-
 3 section (c)(3) or (d)(3) shall not exceed \$5,000,000.

4 **“SEC. 1303. TAXPAYER MAY ELECT CREDIT IN LIEU OF DE-**
 5 **DUCTION.**

6 “(a) MINORITY AND WOMEN VENTURE CAPITAL
 7 FUNDS.—

8 “(1) IN GENERAL.—A taxpayer may elect, in
 9 lieu of the deduction under section 1301, to take a
 10 credit against the tax imposed by this chapter for
 11 the taxable year in an amount equal to 15 percent
 12 of the sum of the aggregate bases of—

13 “(A) qualified minority fund interests, and

14 “(B) qualified women’s fund interest,
 15 which are acquired by the taxpayer during the tax-
 16 able year at their original issuance (directly or
 17 through an underwriter), and which are held by the
 18 taxpayer at the end of the taxable year.

19 “(2) LIMITATIONS.—The amount allowable as a
 20 credit under paragraph (1) for any taxable year
 21 shall not exceed the lesser of—

22 “(A) \$500,000 (\$250,000 in the case of a
 23 separate return by a married individual), or

24 “(B) \$7,000,000, (\$3,500,000 in the case
 25 of a separate return by a married individual),

1 reduced by the amount of the credit allowed
 2 under paragraph (1) for all preceding taxable
 3 years.

4 “(3) CARRYOVER.—If the amount otherwise al-
 5 lowable as a credit under paragraph (1) exceeds the
 6 limitation under paragraph (2)(A) for any taxable
 7 year, the amount of such excess shall, subject to the
 8 limitation of paragraph (2), be treated as an amount
 9 which is allowable as a credit in the following tax-
 10 able year.

11 “(b) SMALL MINORITY AND WOMEN’S BUSINESS
 12 CORPORATIONS.—

13 “(1) IN GENERAL.—A taxpayer may elect, in
 14 lieu of the deduction under section 1302, to take a
 15 credit against the tax imposed by this chapter for
 16 the taxable year in an amount equal to 10 percent
 17 of the sum of the aggregate bases of—

18 “(A) small minority business stock

19 “(B) small women’s business corporations,
 20 which are acquired by the taxpayer during the tax-
 21 able year at their original issuance (directly or
 22 through an underwriter), and which are held by the
 23 taxpayer at the end of the taxable year.

1 “(2) LIMITATIONS.—The amount allowable as a
2 credit under paragraph (1) for any taxable year
3 shall not exceed the lesser of—

4 “(A) \$250,000 (\$125,000 in the case of a
5 separate return by a married individual), or

6 “(B) \$5,000,000, (\$2,500,000 in the case
7 of the separate return by a married individual),
8 reduced by the amount of the credit allowed
9 under paragraph (1) for all preceding taxable
10 years.

11 “(3) CARRYOVER.—If the amount otherwise al-
12 lowable as a credit under paragraph (1) exceeds the
13 limitation under paragraph (2)(A) for any taxable
14 year, the amount of such excess shall, subject to the
15 limitation of paragraph (2), be treated as an amount
16 which is allowable as a credit in the following tax-
17 able year.

18 “(c) APPLICATION WITH OTHER PROVISIONS.—For
19 purposes of this title, any credit allowed under this section
20 shall be treated in the same manner as a credit allowed
21 under subpart B of part IV of subchapter A.

22 “(d) ELECTION.—An election under this section for
23 any taxable year shall be made at such time and in such
24 manner as the Secretary may prescribe and shall apply

1 with respect to all acquisitions to which this subpart ap-
 2 plies for such taxable year.

3 **“SEC. 1304. RECAPTURE PROVISIONS.**

4 “(a) BASIS REDUCTION.—For purposes of this title,
 5 the basis of any qualified minority or women’s fund inter-
 6 est or small minority or women’s business stock shall be
 7 reduced by the amount of the deduction allowed under sec-
 8 tion 1301 or 1302, or the credit allowed under section
 9 1303, with respect to such property. In any case in which
 10 the deduction allowable under subsection (a) of section
 11 1301 or 1302 (as the case may be) is limited by reason
 12 of subsection (b) of such section, or in any case in which
 13 the credit allowable under subsection (a)(1) or (b)(1) of
 14 section 1303 is limited by reason of subsection (a)(2) or
 15 (b)(2) of section 1303, the deduction or credit shall be
 16 allocated proportionately among the qualified minority or
 17 women’s fund interests or small minority or women’s busi-
 18 nesses stock, whichever is applicable, acquired during the
 19 taxable year on the basis of their respective bases (as de-
 20 termined before any reduction under this subsection).

21 “(b) DEDUCTION RECAPTURED AS ORDINARY IN-
 22 COME.—

23 “(1) IN GENERAL.—For purposes of section
 24 1245—

1 “(A) any property the basis of which is re-
 2 duced under subsection (a) (and any other
 3 property the basis of which is determined in
 4 whole or in part by reference to the adjusted
 5 basis of such property) shall be treated as sec-
 6 tion 1245 property, and

7 “(B) any reduction under subsection (a)
 8 shall be treated as a deduction allowed for de-
 9 preciation.

10 If an exchange of any stock the basis of which is re-
 11 duced under subsection (a) qualifies under section
 12 354(a), 355(a), or 356(a), the amount of gain recog-
 13 nized under section 1254 by reason of this para-
 14 graph shall not exceed the amount of gain recog-
 15 nized in the exchange (determined without regard to
 16 this paragraph).

17 “(2) CERTAIN EVENTS TREATED AS DISPOSI-
 18 TIONS.—For purposes of this section, if—

19 “(A) a deduction was allowable under sec-
 20 tion 1301, or a credit was allowable under sec-
 21 tion 1303, with respect to any stock in a cor-
 22 poration or interest in a partnership and such
 23 corporation or partnership, as the case may be,
 24 ceases to meet the requirements of paragraphs
 25 (2) and (3) of section 1301(c), or

1 “(B) a deduction was allowable under sec-
2 tion 1302, or a credit was allowable under sec-
3 tion 1303, with respect to any stock in a cor-
4 poration and such corporation ceases to be a
5 qualified minority corporation or qualified wom-
6 en’s corporation, whichever is applicable, the
7 taxpayer shall be treated as having disposed of
8 such property for an amount equal to its fair
9 market value.

10 “(c) INTEREST CHARGED IF DISPOSITION WITHIN 5
11 YEARS.—

12 “(1) IN GENERAL.—If a taxpayer disposes of
13 any property the basis of which is reduced under
14 subsection (a) before the date 5 years after the date
15 of its acquisition by the taxpayer, the tax imposed
16 by this chapter for the taxable year in which such
17 disposition occurs shall be increased by interest at
18 the underpayment rate (established under section
19 6621(a)(2))—

20 “(A) on the additional tax which would
21 have been imposed under this chapter for the
22 taxable year in which such property was ac-
23 quired if such property had not been taken into
24 account under section 1301, 1302, or 1303,
25 whichever is applicable;

15 **“Subpart B—Capital Gain Provisions**

“Sec. 1312. Deferral of capital gain reinvested in certain property.

18 “(a) GENERAL RULE.—Gross income shall not in-
19 clude 50 percent of any gain on the sale or exchange of
20 any property by a qualified minority or women’s fund if
21 such property was acquired after the date of the enact-
22 ment of this part and was held by such fund for at least
23 5 years.

1 “(b) QUALIFIED MINORITY FUND.—For purposes of
 2 this section, the term ‘qualified minority fund’ means any
 3 domestic corporation or domestic partnership which meets
 4 the requirements of paragraphs (2) and (3) of section
 5 1301(c).

6 “(c) QUALIFIED WOMEN’S FUND.—For purposes of
 7 this section, the term ‘qualified women’s fund’ means any
 8 domestic corporation or partnership meeting the require-
 9 ments of paragraphs (2) and (3) of section 1301(c) (as
 10 modified by section 1301(d)).

11 **“SEC. 1312. DEFERRAL OF CAPITAL GAIN REINVESTED IN**
 12 **CERTAIN PROPERTY.**

13 “(a) GENERAL RULE.—Except as otherwise provided
 14 in this section, in the case of an individual, any qualified
 15 reinvested capital gain shall be taken into account for pur-
 16 poses of this title—

17 “(1) in the 9th taxable year following the tax-
 18 able year of the sale or exchange, or

19 “(2) in such earlier taxable year (or years) fol-
 20 lowing the taxable year of the sale or exchange as
 21 the taxpayer may provide.

22 “(b) LIMITATIONS.—

23 “(1) DOLLAR LIMITATION.—

24 “(A) IN GENERAL.—The amount of the
 25 gain to which subsection (a) applies shall not

1 exceed \$500,000, reduced by the aggregate
 2 amount of gain of the taxpayer to which sub-
 3 section (a) applied for prior taxable years. This
 4 subparagraph shall be applied separately for
 5 property described in subsections (c)(2) (A) and
 6 (B) and for property described in subsection
 7 (c)(2) (C) and (D).

8 “(B) SPECIAL RULE.—The amount of gain
 9 to which subsection (a) applied on a joint re-
 10 turn for any taxable year shall be allocated
 11 equally between the spouses in determining the
 12 limitation under subparagraph (A) for any sub-
 13 sequent taxable year.

14 “(2) INELIGIBILITY OF CERTAIN TAXPAYERS.—
 15 Subsection (a) shall not apply to—

16 “(A) a married individual (as defined in
 17 section 7703) who does not file a joint return
 18 for the taxable year, or

19 “(B) any estate or trust.

20 “(c) QUALIFIED REINVESTED CAPITAL GAIN.—For
 21 purposes of this section—

22 “(1) QUALIFIED REINVESTED CAPITAL GAIN.—

23 The term qualified reinvested capital gain’ means
 24 the amount of any long-term capital gain (deter-
 25 mined without regard to this section) from any sale

1 or exchange after the date of the enactment of this
 2 part to which an election under this section applies
 3 but only to the extent that the amount of such gain
 4 exceeds the excess (if any) of—

5 “(A) the amount realized on such sale or
 6 exchange, over

7 “(B) the cost of any qualified property
 8 which the taxpayer elects to take into account
 9 under this paragraph with respect to such sale
 10 or exchange.

11 For purposes of subparagraph (B), the cost of any
 12 property shall be reduced by the portion of such cost
 13 previously taken into account under this paragraph.

14 “(2) QUALIFIED PROPERTY.—The term ‘quali-
 15 fied property’ means—

16 “(A) any qualified minority fund interest
 17 acquired by the taxpayer at its original issuance
 18 (directly or through an underwriter),

19 “(B) any small minority business stock ac-
 20 quired by the taxpayer at its original issuance
 21 (directly or through an underwriter),

22 “(C) any qualified women’s fund interest
 23 acquired by the taxpayer at its original issuance
 24 (directly or through an underwriter), and

1 “(D) any small women’s business stock ac-
 2 quired by the taxpayer at its original issuance
 3 (directly or through an underwriter).

4 Such term shall not include any property taken into
 5 account by the taxpayer under section 1301, 1302,
 6 or 1303.

7 “(3) REINVESTMENT PERIOD.—The term ‘rein-
 8 vestment period’ means, with respect to any sale or
 9 exchange, the period beginning on the date of the
 10 sale or exchange and ending on the day 1 year after
 11 the close of the taxable year in which the sale or ex-
 12 change occurs.

13 “(d) TERMINATION OF DEFERRAL IN CERTAIN
 14 CASES.—

15 “(1) CERTAIN DISPOSITIONS, ETC., OF RE-
 16 PLACEMENT PROPERTY.—

17 “(A) IN GENERAL.—If the taxpayer dis-
 18 poses of any qualified property before the date
 19 5 years after the date of its purchase—

20 “(i) any amount treated as a qualified
 21 reinvested capital gain by reason of the
 22 purchase of such property (to the extent
 23 not previously taken into account under
 24 subsection (a)) shall be taken into account

1 for the taxable year in which such disposi-
2 tion or cessation occurs, and

3 “(ii) the tax imposed by this chapter
4 for the taxable year in which such disposi-
5 tion or cessation occurs shall be increased
6 by interest at the underpayment rate (es-
7 tablished under section 6621(a)(2))—

8 “(I) on the additional tax which
9 would have been imposed under this
10 chapter (but for this section) for the
11 taxable year of the sale or exchange,
12 and

13 “(II) for the period of the defer-
14 ral under this section.

15 Any increase in tax under clause (ii) shall not
16 be treated as a tax imposed by this chapter for
17 purposes of determining the amount of any
18 credit allowable under this chapter or the
19 amount of the minimum tax imposed by section
20 55.

21 “(B) CERTAIN EVENTS TREATED AS DIS-
22 POSITIONS.—For purposes of subparagraph
23 (A), rules similar to the rules of section
24 1304(b)(2) shall apply.

1 “(2) LAST TAXABLE YEAR.—In the case of the
 2 last taxable year of any taxpayer, any qualified rein-
 3 vestment capital gain (to the extent not previously
 4 taken into account under subsection (a)) shall be
 5 taken into account for such last taxable year.

6 “(e) COORDINATION WITH INSTALLMENT METHOD
 7 REPORTING.—This section shall not apply to any gain
 8 from any installment sale (as defined in section 453(b))
 9 if section 453(a) applies to such sale.

10 “(f) STATUTE OF LIMITATIONS.—If any gain is real-
 11 ized by the taxpayer on any sale or exchange to which
 12 an election under this section applies, then—

13 “(1) the statutory period for the assessment of
 14 any deficiency with respect to such gain shall not ex-
 15 pire before the expiration of 3 years from the date
 16 the Secretary is notified by the taxpayer (in such
 17 manner as the Secretary may by regulations pre-
 18 scribe) of—

19 “(A) the taxpayer’s cost of purchasing any
 20 qualified property,

21 “(B) the taxpayer’s intention not to pur-
 22 chase qualified property within the reinvestment
 23 period, or

24 “(C) a failure to make such purchase with-
 25 in the reinvestment period, and

1 “(2) such deficiency may be assessed before the
 2 expiration of such 3-year period notwithstanding the
 3 provisions of any law or rule of law which would oth-
 4 erwise prevent such assessment.

5 **“Subpart C—General Provisions**

 “Sec. 1321. Qualified minority corporation defined.

 “Sec. 1322. Qualified women’s corporation defined.

 “Sec. 1323. Other definitions and special rules.

6 **“SEC. 1321. QUALIFIED MINORITY CORPORATION DEFINED.**

7 “‘For purposes of this part, the term ‘qualified minor-
 8 ity corporation’ means any domestic corporation if—

9 “(1) 50 percent or more of the total value of
 10 the stock of such corporation is held by individuals
 11 who are members of a minority,

12 “(2) throughout the 5-year period ending on
 13 the date as of which the determination is being
 14 made (or, if shorter, throughout the period such cor-
 15 poration was in existence), such corporation has
 16 been engaged in the active conduct of a trade or
 17 business or in startup activities relating to a trade
 18 or business, and

19 “(3) substantially all of the assets of such cor-
 20 poration are used in the active conduct of a trade
 21 or business or in startup activities related to a trade
 22 or business.

1 **“SEC. 1322. QUALIFIED WOMEN’S CORPORATION.**

2 “For purposes of this part, the term ‘qualified wom-
3 en’s corporation’ means any domestic corporation if—

4 “(1) 50 percent or more of the total value of
5 the stock of such corporation is held by individuals
6 who are women,

7 “(2) the management and daily business oper-
8 ations of the corporation are controlled by one or
9 more women, and

10 “(3) the requirements of paragraphs (2) and
11 (3) of section 1301 are met with respect to the cor-
12 poration.

13 **“SEC. 1323. OTHER DEFINITIONS AND SPECIAL RULES.**

14 “(a) MINORITY INDIVIDUALS.—For purposes of this
15 part, individuals are members of a minority if the partici-
16 pation of such individuals in the free enterprise system
17 is hampered because of social disadvantage within the
18 meaning of section 301(d) of the Small Business Invest-
19 ment Act of 1958.

20 “(b) CONTROLLED GROUP RULES.—

21 “(1) IN GENERAL.—All corporations which are
22 members of the same controlled groups shall be
23 treated as 1 corporation for purposes of this part.

24 “(2) CONTROLLED GROUP.—For purposes of
25 paragraph (1), the term ‘controlled group’ has the
26 meaning given such term by section 179(d)(7).”

1 (b) The table of parts for subchapter P of chapter
2 1 of such Code is amended by adding at the end thereof
3 the following item:

“Part VI. Incentives for investments in disadvantaged and
women-owned enterprises.”

4 (c) The amendments made by this section shall apply
5 to taxable years ending after the date of the enactment
6 of this Act.

