

106TH CONGRESS
1ST SESSION

H. R. 2402

To amend the Internal Revenue Code of 1986 to establish a 15-year recovery period for franchise property, to provide a shorter recovery period for the depreciation of certain leasehold improvements, to allow capital gain treatment on the transfer of a franchise in connection with the transfer of an existing business, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 30, 1999

Mr. LEWIS of Kentucky (for himself, Mr. ENGLISH, Ms. DUNN, Mr. CAMP, Mr. RAMSTAD, Mr. HAYWORTH, Mr. PAUL, and Mr. NORTHUP) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to establish a 15-year recovery period for franchise property, to provide a shorter recovery period for the depreciation of certain leasehold improvements, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Small Business Fran-
3 chise Tax Relief Act of 1999”.

4 **SEC. 2. CLASS LIFE FOR FRANCHISE OPERATIONS.**

5 (a) IN GENERAL.—Section 168(e)(3)(E) of the Inter-
6 nal Revenue Code of 1986 (classifying certain property as
7 15-year property) is amended by striking “and” at the end
8 of clause (ii), by striking the period at the end of clause
9 (iii) and inserting “, and”, and by adding at the end the
10 following new clause:

11 “(iv) any section 1250 property which
12 is a franchise operation subject to section
13 1253.”.

14 (b) CONFORMING AMENDMENT.—Subparagraph (B)
15 of section 168(g)(3) of such Code is amended by inserting
16 after the item relating to subparagraph (E)(iii) in the
17 table contained therein the following new item:

“ (E)(iv) 20 ”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to property which is placed in serv-
20 ice on or after the date of the enactment of this Act and
21 to which section 168 of the Internal Revenue Code of 1986
22 applies after the amendment made by section 201 of the
23 Tax Reform Act of 1986. A taxpayer may elect (in such
24 form and manner as the Secretary of the Treasury may
25 prescribe) to have such amendments apply with respect

1 to any property placed in service before such date and to
 2 which such section so applies.

3 **SEC. 3. RECOVERY PERIOD FOR DEPRECIATION OF CER-**
 4 **TAIN LEASEHOLD IMPROVEMENTS.**

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

11 “(iii) any qualified leasehold improve-
 12 ment property.”.

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

17 “(6) QUALIFIED LEASEHOLD IMPROVEMENT
 18 PROPERTY.—

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

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

1 “(I) by the lessee (or any sublessee)
2 see) of such portion, or

3 “(II) by the lessor of such portion,
4 tion,

5 “(ii) such portion is to be occupied exclusively
6 by the lessee (or any sublessee) of
7 such portion, and

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

11 “(B) CERTAIN IMPROVEMENTS NOT INCLUDED.—Such term shall not include any improvement
12 for which the expenditure is attributable to—
13
14

15 “(i) the enlargement of the building,

16 “(ii) any elevator or escalator,

17 “(iii) any structural component benefiting a common area, and
18

19 “(iv) the internal structural framework of the building.
20

21 “(C) DEFINITIONS AND SPECIAL RULES.—

22 For purposes of this paragraph—

23 “(i) COMMITMENT TO LEASE TREATED AS LEASE.—A commitment to enter
24 into a lease shall be treated as a lease, and
25

1 the parties to such commitment shall be
2 treated as lessor and lessee, respectively.

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

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

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

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

22 “(G) Qualified leasehold improvement
23 property described in subsection (e)(6).”.

24 (d) ALTERNATIVE SYSTEM.—The table contained in
25 section 168(g)(3)(B) of such Code is amended by inserting

1 after the item relating to subparagraph (D)(ii) the fol-
 2 lowing new item:

“(D)(iii) 10 ”.

3 (e) EFFECTIVE DATE.—The amendments made by
 4 this section shall apply to qualified leasehold improvement
 5 property placed in service after the date of the enactment
 6 of this Act.

7 **SEC. 4. TREATMENT OF TRANSFERS OF FRANCHISES IN**
 8 **CONNECTION WITH TRANSFER OF EXISTING**
 9 **BUSINESS OPERATION.**

10 (a) CAPITAL GAIN TREATMENT.—Section 1253 of
 11 the Internal Revenue Code of 1986 (relating to transfers
 12 of franchises, trademarks, and trade names) is amended
 13 by adding at the end the following new subsection:

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

16 “(1) IN GENERAL.—Subsection (a) shall not
 17 apply to the transfer of a franchise to an eligible
 18 transferee if—

19 “(A) the trade or business which is the
 20 subject matter of the franchise has been ac-
 21 tively carried on for not less than 2 years as of
 22 the date of the transfer,

1 “(B) the transferee acquires the right to
2 operate such trade or business in connection
3 with such transfer, and

4 “(C) the transferee and the transferor are
5 not related persons (as defined in section
6 197(f)(9)(C)).

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

9 “(A) an individual,

10 “(B) any domestic corporation all of the
11 stock in which is owned by an individual and
12 the members of such individual’s family (within
13 the meaning of section 267(e)(4)),

14 “(C) a corporation—

15 “(i) which meets the requirements of
16 section 1361(b) (determined by sub-
17 stituting ‘35’ for ‘75’ in paragraph (1)
18 thereof), and

19 “(ii) which meets the requirements of
20 section 1202(d) (determined by treating
21 such transfer as the issuance referred to in
22 such section), or, in the case of a corpora-
23 tion which is not a C corporation, would
24 meet such requirements (as so determined)
25 were it a C corporation, or

1 “(D) a partnership which would meet the
 2 requirements of subparagraph (B) or (C) if it
 3 were a corporation and interests in the profits
 4 or capital of the partnership were stock.”.

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

12 (c) MAXIMUM RATE OF TAX.—Subsection (a) of sec-
 13 tion 1201 of such Code (relating to alternative tax for cor-
 14 porations) is amended by striking “plus” at the end of
 15 paragraph (1) and by striking paragraph (2) and inserting
 16 the following new paragraphs:

17 “(2) 20 percent of the lesser of—

18 “(A) the net capital gain determined by
 19 taking into account only gain and loss attrib-
 20 utable to transfers of franchises to which sec-
 21 tion 1253(a) does not apply by reason of sec-
 22 tion 1253(f), or

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

25 “(3) 35 percent of the excess (if any) of—

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

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

5 (d) **EFFECTIVE DATE.**—The amendments made by
6 this section shall apply to transfers after the date of the
7 enactment of this Act.

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