

106TH CONGRESS
1ST SESSION

H. R. 2705

To amend the Internal Revenue Code of 1986 to prevent the avoidance
of gain recognition through swap funds.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 4, 1999

Mr. NEAL of Massachusetts 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 prevent
the avoidance of gain recognition through swap funds.

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. RECOGNITION OF GAIN ON TRANSFERS TO**
4 **SWAP FUNDS.**

5 (a) INTERESTS SIMILAR TO PREFERRED STOCK
6 TREATED AS STOCK.—Clause (vi) of section 351(e)(1)(B)
7 of the Internal Revenue Code of 1986 (relating to transfer
8 of property to an investment company) is amended to read
9 as follows:

1 “(vi) except as otherwise provided in
2 regulations prescribed by the Secretary—

3 “(I) any interest in an entity if
4 the return on such interest is limited
5 and preferred, and

6 “(II) interests (not described in
7 subclause (I)) in any entity if substan-
8 tially all of the assets of such entity
9 consist (directly or indirectly) of any
10 assets described in subclause (I), any
11 preceding clause, or clause (viii).”

12 (b) CERTAIN TRANSFERS DEEMED TO BE TO IN-
13 VESTMENT COMPANIES.—Subsection (e) of section 351 of
14 such Code is amended by adding at the end the following
15 new paragraph:

16 “(3) TRANSFERS OF MARKETABLE SECURITIES
17 TO CERTAIN CORPORATIONS.—A transfer of property
18 to a corporation if—

19 “(A) such property is marketable securities
20 (as defined in section 731(c)(2)), and

21 “(B) such corporation—

22 “(i) is registered under the Invest-
23 ment Company Act of 1940 as an invest-
24 ment company, or is exempt from registra-
25 tion as a investment company under sec-

1 tion 3(c)(7) of such Act because interests
 2 in such corporation are offered to qualified
 3 purchasers within the meaning of section
 4 2(a)(51) of such Act, or

5 “(ii) is formed or availed of for pur-
 6 poses of allowing persons who have signifi-
 7 cant blocks of marketable securities with
 8 unrealized appreciation to diversify those
 9 holdings without recognition of gain.”

10 (c) TRANSFERS TO PARTNERSHIPS.—Subsection (b)
 11 of section 721 of such Code is amended to read as follows:

12 “(b) SPECIAL RULE.—Subsection (a) shall not apply
 13 to gain realized on a transfer of property to a partnership
 14 if, were the partnership incorporated—

15 “(1) such partnership would be treated as an
 16 investment company (within the meaning of section
 17 351), or

18 “(2) section 351 would not apply to such trans-
 19 fer by reason of section 351(e)(3).”

20 (d) EFFECTIVE DATE.—

21 (1) IN GENERAL.—The amendments made by
 22 this section shall apply to transfers after the date of
 23 action by the Committee on Ways and Means.

24 (2) BINDING CONTRACTS.—The amendments
 25 made by this section shall not apply to any transfer

1 pursuant to a written binding contract in effect on
2 August 3, 1999, and at all times thereafter before
3 such transfer if such contract provides for the trans-
4 fer of a fixed amount of property.

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