107TH CONGRESS
1ST SESSION

H. R. 1728

To amend the Internal Revenue Code of 1986 to repeal the personal holding
company tax.

IN THE HOUSE OF REPRESENTATIVES

MAY 3, 2001

Mr. RANGEL 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 repeal
the personal holding company tax.

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. REPEAL OF PERSONAL HOLDING COMPANY**

4   **TAX.**

5   (a) IN GENERAL.—Part II of subchapter G of chap-

6 ter 1 of the Internal Revenue Code of 1986 (relating to

7 personal holding companies) is hereby repealed.

8   (b) LIMITATION ON DIVIDEND RECEIVED DEDUC-

9 TION OF CLOSELY HELD CORPORATIONS.—Section 246 of

2

such Code is amended by inserting the following at the end thereof:

"(f) CERTAIN CLOSELY HELD CORPORATIONS.—

"(1) GENERAL RULE.—In the case of a corporation to which this subsection applies, the deductions allowed under this part for dividends (other than qualifying dividends) received during the taxable year shall not exceed the dividends paid during such year.

"(2) CORPORATIONS TO WHICH PARAGRAPH (1) APPLIES.—Paragraph (1) shall apply to a corporation if—

"(A) at least 5 percent of it gross income for the taxable year consists of dividends other than qualifying dividends, and

"(B) the corporation is described in section 465(a)(1)(B).

"(3) CARRYOVER OF DISALLOWED DEDUCTION.—The amount of deduction which is disallowed by paragraph (1) shall be allowable in the succeeding taxable year in the same manner as if the dividends to which such disallowed deduction relates were received during such succeeding year.

"(4) QUALIFYING DIVIDENDS.—For purposes of this subsection, the term 'qualifying dividends' has

3

1 the meaning given to such term by section 243(b);

2 except that such term shall not include any distribu-

3 tion directly or indirectly from earnings and profits

4 attributable to dividends which are not described in

5 section 243(b).''

6 (c) CONFORMING AMENDMENTS.—

7 (1) Section 12(2) of such Code is amended to

8 read as follows:

9 ''(2) For accumulated earnings tax, see part I

10 of subchapter G (sec. 531 and following).''.

11 (2) Section 26(b)(2) of such Code is amended

12 by striking subparagraph (G) and by redesignating

13 the succeeding subparagraphs accordingly.

14 (3) Section 30A(c) of such Code is amended by

15 striking paragraph (3) and by redesignating para-

16 graph (4) as paragraph (3).

17 (4) Section 41(e)(7)(E) of such Code is amend-

18 ed by adding ''and'' at the end of clause (i), by

19 striking clause (ii), and by redesignating clause (iii)

20 as clause (ii).

21 (5) Section 56(b)(2) of such Code is amended

22 by striking subparagraph (C) and by redesignating

23 subparagraph (D) as subparagraph (C).

24 (6) Section 170(e)(4)(D) of such Code is

25 amended by adding ''and'' at the end of clause (i),

1 by striking clause (ii), and by redesignating clause

2 (iii) as clause (ii).

3   (7) Section 111(d) of such Code is amended to

4 read as follows:

5 "(d) SPECIAL RULES FOR ACCUMULATED EARNINGS

6 TAX.—In applying subsection (a) for the purpose of deter-

7 mining the accumulated earnings tax under section 531—

8   "(1) any excluded amount under subsection (a)

9   allowed for purposes of this subtitle (other than sec-

10   tion 531) shall be allowed whether or not such

11   amount resulted in a reduction of the tax under sec-

12   tion 531 for the prior taxable year, and

13   "(2) where any excluded amount under sub-

14   section (a) was not allowed as a deduction for the

15   prior taxable year for purposes of this subtitle other

16   than section 531 but was allowable for the same tax-

17   able year under section 531, then such excluded

18   amount shall be allowable if it did not result in a re-

19   duction of the tax under section 531.".

20   (8)(A) Section 316(b) of such Code is amended

21   by striking paragraph (2) and by redesignating

22   paragraph (3) as paragraph (2).

23   (B) Section 331(b) of such Code is amended by

24   striking "(other than a distribution referred to in

25   paragraph (2)(B) of section 316(b))".

1   (9) Section 341(d) of such Code is amended—

2   (A) by striking "section 544(a)" and in-

3   serting "section 465(f)", and

4   (B) by inserting before the period at the

5   end of the next to the last sentence "and such

6   paragraph (2) shall be applied by inserting 'by

7   or for his partner' after 'his family' ".

8   (10) Section 381(c) of such Code is amended by

9 striking paragraphs (14) and (17).

10   (11) Section 443(e) of such Code is amended by

11 striking paragraph (2) and by redesignating para-

12 graphs (3), (4), and (5) as paragraphs (2), (3), and

13 (4), respectively.

14   (12) Section 447(g)(4)(A) of such Code is

15 amended by striking "other than—" and all that fol-

16 lows and inserting "other than an S corporation."

17   (13)(A) Section 465(a)(1)(B) of such Code is

18 amended to read as follows:

19   "(B) a C corporation which is closely

20   held,".

21   (B) Section 465(a)(3) of such Code is amended

22 to read as follows:

23   "(3) CLOSELY HELD DETERMINATION.—For

24 purposes of paragraph (1), a corporation is closely

25 held if, at any time during the last half of the tax-

1 able year, more than 50 percent in value of its out-

2 standing stock is owned, directly or indirectly, by or

3 for not more than 5 individuals. For purposes of this

4 paragraph, an organization described in section

5 401(a), 501(c)(17), or 509(a) or a portion of a trust

6 permanently set aside or to be used exclusively for

7 the purposes described in section 642(c) shall be

8 considered an individual.''

9 (C) Section 465 of such Code is amended by

10 adding at the end the following new subsection:

11 ''(f) CONSTRUCTIVE OWNERSHIP RULES.—For pur-

12 poses of subsection (a)(3)—

13 ''(1) STOCK NOT OWNED BY INDIVIDUAL.—

14 Stock owned, directly or indirectly, by or for a cor-

15 poration, partnership, estate, or trust shall be con-

16 sidered as being owned proportionately by its share-

17 holders, partners, or beneficiaries.

18 ''(2) FAMILY OWNERSHIP.—An individual shall

19 be considered as owning the stock owned, directly or

20 indirectly, by or for his family. For purposes of this

21 paragraph, the family of an individual includes only

22 his brothers and sisters (whether by the whole or

23 half blood), spouse, ancestors, and lineal descend-

24 ants.

1 "(3) OPTIONS.—If any person has an option to
2 acquire stock, such stock shall be considered as
3 owned by such person. For purposes of this para-
4 graph, an option to acquire such an option, and each
5 one of a series of such options, shall be considered
6 as an option to acquire such stock.

7 "(4) APPLICATION OF FAMILY AND OPTION
8 RULES.—Paragraphs (2) and (3) shall be applied if,
9 but only if, the effect is to make the corporation
10 closely held under subsection (a)(3).

11 "(5) CONSTRUCTIVE OWNERSHIP AS ACTUAL
12 OWNERSHIP.—Stock constructively owned by a per-
13 son by reason of the application of paragraph (1) or
14 (3), shall, for purposes of applying paragraph (1) or
15 (2), be treated as actually owned by such person;
16 but stock constructively owned by an individual by
17 reason of the application of paragraph (2) shall not
18 be treated as owned by him for purposes of again
19 applying such paragraph in order to make another
20 the constructive owner of such stock.

21 "(6) OPTION RULE IN LIEU OF FAMILY
22 RULE.—If stock may be considered as owned by an
23 individual under either paragraph (2) or (3) it shall
24 be considered as owned by him under paragraph (3).

1 ''(7) CONVERTIBLE SECURITIES.—Outstanding

2 securities convertible into stock (whether or not con-

3 vertible during the taxable year) shall be considered

4 as outstanding stock if the effect of the inclusion of

5 all such securities is to make the corporation closely

6 held under subsection (a)(3). The requirement under

7 the preceding sentence that all convertible securities

8 must be included if any are to be included shall be

9 subject to the exception that, where some of the out-

10 standing securities are convertible only after a later

11 date than in the case of others, the class having the

12 earlier conversion date may be included although the

13 others are not included, but no convertible securities

14 shall be included unless all outstanding securities

15 having a prior conversion date are also included.''

16   (D) Section 465(c)(7)(B) of such Code is

17 amended by striking clause (i) and by redesignating

18 clauses (ii) and (iii) as clauses (i) and (ii), respec-

19 tively.

20   (E) Section 465(c)(7)(G) of such Code is

21 amended to read as follows:

22   ''(G) LOSS OF 1 MEMBER OF AFFILIATED

23   GROUP MAY NOT OFFSET INCOME OF PERSONAL

24   SERVICE CORPORATION.—Nothing in this para-

25   graph shall permit any loss of a member of an

1 affiliated group to be used as an offset against

2 the income of any other member of such group

3 which is a personal service corporation (as de-

4 fined in section 269A(b) but determined by sub-

5 stituting '5 percent' for '10 percent' in section

6 269A(b)(2)).''

7 (14) Sections 508(d), 4947, and 4948(c)(4) of

8 such Code are each amended by striking

9 ''545(b)(2),'' each place it appears.

10 (15) Section 532(b) of such Code is amended

11 by striking paragraph (1) and by redesignating

12 paragraphs (2), (3), and (4) as paragraphs (1), (2),

13 and (3), respectively.

14 (16) Sections 535(b)(1) and 556(b)(1) of such

15 Code are each amended by striking ''section 541''

16 and inserting ''section 541 (as in effect before its re-

17 peal)''.

18 (17)(A) Section 553(a)(1) of such Code is

19 amended by striking ''section 543(d)'' and inserting

20 ''subsection (c)''.

21 (B) Section 553 of such Code is amended by

22 adding at the end the following new subsection:

23 ''(c) ACTIVE BUSINESS COMPUTER SOFTWARE ROY-

24 ALTIES.—

1   "(1) IN GENERAL.—For purposes of subsection

2   (a), the term 'active business computer software roy-

3   alties' means any royalties—

4   "(A) received by any corporation during

5   the taxable year in connection with the licensing

6   of computer software, and

7   "(B) with respect to which the require-

8   ments of paragraphs (2), (3), (4), and (5) are

9   met.

10   "(2) ROYALTIES MUST BE RECEIVED BY COR-

11   PORATION ACTIVELY ENGAGED IN COMPUTER SOFT-

12   WARE BUSINESS.—The requirements of this para-

13   graph are met if the royalties described in paragraph

14   (1)—

15   "(A) are received by a corporation engaged

16   in the active conduct of the trade or business

17   of developing, manufacturing, or producing

18   computer software, and

19   "(B) are attributable to computer software

20   which—

21   "(i) is developed, manufactured, or

22   produced by such corporation (or its prede-

23   cessor) in connection with the trade or

24   business described in subparagraph (A), or

1   "(ii) is directly related to such trade

2   or business.

3   "(3) ROYALTIES MUST CONSTITUTE AT LEAST

4 50 PERCENT OF INCOME.—The requirements of this

5 paragraph are met if the royalties described in para-

6 graph (1) constitute at least 50 percent of the ordi-

7 nary gross income of the corporation for the taxable

8 year.

9   "(4) DEDUCTIONS UNDER SECTIONS 162 AND

10 174 RELATING TO ROYALTIES MUST EQUAL OR EX-

11 CEED 25 PERCENT OF ORDINARY GROSS INCOME.—

12   "(A) IN GENERAL.—The requirements of

13   this paragraph are met if—

14   "(i) the sum of the deductions allow-

15   able to the corporation under sections 162,

16   174, and 195 for the taxable year which

17   are properly allocable to the trade or busi-

18   ness described in paragraph (2) equals or

19   exceeds 25 percent of the ordinary gross

20   income of such corporation for such tax-

21   able year, or

22   "(ii) the average of such deductions

23   for the 5-taxable year period ending with

24   such taxable year equals or exceeds 25 per-

1   cent of the average ordinary gross income

2   of such corporation for such period.

3   If a corporation has not been in existence dur-

4 ing the 5-taxable year period described in clause

5 (ii), then the period of existence of such cor-

6 poration shall be substituted for such 5-taxable

7 year period.

8   "(B) DEDUCTIONS ALLOWABLE UNDER

9 SECTION 162.—For purposes of subparagraph

10 (A), a deduction shall not be treated as allow-

11 able under section 162 if it is specifically allow-

12 able under another section.

13   "(C) LIMITATION ON ALLOWABLE DEDUC-

14 TIONS.—For purposes of subparagraph (A), no

15 deduction shall be taken into account with re-

16 spect to compensation for personal services ren-

17 dered by the 5 individual shareholders holding

18 the largest percentage (by value) of the out-

19 standing stock of the corporation. For purposes

20 of the preceding sentence individuals holding

21 less than 5 percent (by value) of the stock of

22 such corporation shall not be taken into ac-

23 count."

24   (18) Section 561(a) of such Code is amended

25 by striking paragraph (3), by inserting "and" at the

1 end of paragraph (1), and by striking '', and'' at the

2 end of paragraph (2) and inserting a period.

3 (19) Section 562(b) of such Code is amended to

4 read as follows:

5 ''(b) DISTRIBUTIONS IN LIQUIDATION.—Except in

6 the case of a foreign personal holding company described

7 in section 552—

8 ''(1) in the case of amounts distributed in liq-

9 uidation, the part of such distribution which is prop-

10 erly chargeable to earnings and profits accumulated

11 after February 28, 1913, shall be treated as a divi-

12 dend for purposes of computing the dividends paid

13 deduction, and

14 ''(2) in the case of a complete liquidation occur-

15 ring within 24 months after the adoption of a plan

16 of liquidation, any distribution within such period

17 pursuant to such plan shall, to the extent of the

18 earnings and profits (computed without regard to

19 capital losses) of the corporation for the taxable year

20 in which such distribution is made, be treated as a

21 dividend for purposes of computing the dividends

22 paid deduction.

23 For purposes of paragraph (1), a liquidation includes a

24 redemption of stock to which section 302 applies. Except

25 to the extent provided in regulations, the preceding sen-

14

1 tence shall not apply in the case of any mere holding or
2 investment company which is not a regulated investment
3 company.''

4   (20) Section 563 of such Code is amended by
5 striking subsection (b).

6   (21) Section 564 of such Code is hereby re-
7 pealed.

8   (22) Section 631(c) of such Code is amended by
9 striking ''or section 545(b)(5)''.

10   (23) Section 852(b)(1) of such Code is amend-
11 ed by striking ''which is a personal holding company
12 (as defined in section 542) or''.

13   (24)(A) Section 856(h)(1) of such Code is
14 amended to read as follows:

15   ''(1) IN GENERAL.—For purposes of subsection
16 (a)(6), a corporation, trust, or association is closely
17 held if the stock ownership requirement of section
18 465(a)(3) is met.''

19   (B) Section 856(h)(3)(A)(i) of such Code is
20 amended by striking ''section 542(a)(2)'' and insert-
21 ing ''section 465(a)(3)''.

22   (C) Paragraph (3) of section 856(h) of such
23 Code is amended by striking subparagraph (B) and
24 by redesignating subparagraphs (C) and (D) as sub-
25 paragraphs (B) and (C), respectively.

1   (D) Subparagraph (C) of section 856(h)(3) of

2   such Code, as redesignating by the preceding sub-

3   paragraph, is amended by striking "subparagraph

4   (C)" and inserting "subparagraph (B)".

5   (25) The last sentence of section 882(c)(2) of

6   such Code is amended to read as follows:

7   "The preceding sentence shall not be construed to

8   deny the credit provided by section 33 for tax with-

9   held at source or the credit provided by section 34

10   for certain used of gasoline.".

11   (26) Section 936(a)(3) of such Code is amended

12   by striking subparagraph (C), by inserting "or" at

13   the end of subparagraph (B), and by redesignating

14   subparagraph (D) as subparagraph (C).

15   (27) Section 992(d) of such Code is amended

16   by striking paragraph (2) and by redesignating suc-

17   ceeding paragraphs accordingly.

18   (28) Section 992(e) of such Code is amended by

19   striking "and section 541 (relating to personal hold-

20   ing company tax)".

21   (29) Section 1202(e)(8) of such Code is amend-

22   ed by striking "section 543(d)(1)" and inserting

23   "section 553(c)(1)".

24   (30) Section 1362(d)(3)(C)(iii) of such Code is

25   amended by adding at the end the following new

1 sentence: ''References to section 542 in the pre-
2 ceding sentence shall be treated as references to
3 such section as in effect on the day before its re-
4 peal.''

5 (31) Section 1504(c)(2)(B) of such Code is
6 amended by adding ''and'' at the end of clause (i),
7 by striking clause (ii), and by redesignating clause
8 (iii) as clause (ii).

9 (32) Section 2057(e)(2)(C) of such Code is
10 amended by adding at the end the following new
11 sentence: ''References to sections 542 and 543 in
12 the preceding sentence shall be treated as references
13 to such sections as in effect on the day before their
14 repeal.''

15 (33) Sections 6422 of such Code is amended by
16 striking paragraph (3) and by redesignating para-
17 graphs (4) through (12) and paragraphs (3) through
18 (11), respectively.

19 (34) Section 6501 of such Code is amended by
20 striking subsection (f).

21 (35) Section 6503(k) of such Code is amended
22 by striking paragraph (1) and by redesignating
23 paragraphs (2) through (5) as paragraphs (1)
24 through (4), respectively.

1 (36) Section 6515 of such Code is amended by

2 striking paragraph (1) and by redesignating para-

3 graphs (2) through (6) as paragraphs (1) through

4 (5), respectively.

5 (37) Subsections (d)(1)(B) and (e)(2) of section

6 6662 of such Code are each amended by striking "or

7 a personal holding company (as defined in section

8 542)".

9 (38) Section 6683 of such Code is hereby re-

10 pealed.

11 (d) CLERICAL AMENDMENTS.—

12 (1) The table of parts for subchapter G of

13 chapter 1 of such Code is amended by striking the

14 item relating to part II.

15 (2) The table of sections for part IV of such

16 subchapter G is amended by striking the item relat-

17 ing to section 564.

18 (3) The table of sections for part I of sub-

19 chapter B of chapter 68 of such Code is amended

20 by striking the item relating to section 6683.

21 (e) EFFECTIVE DATE.—The amendments made by

22 this Act shall apply to taxable years beginning after De-

23 cember 31, 2001.

○