

107TH CONGRESS
1ST SESSION

H. R. 2406

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 28, 2001

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)), other than a
21 diversified portfolio of securities,

22 “(B) such corporation—

23 “(i) is registered under the Invest-
24 ment Company Act of 1940 as an invest-
25 ment company, or is exempt from regis-
 tration under such Act.

6 “(ii) is formed or availed of for pur-
7 poses of allowing persons who have signifi-
8 cant blocks of marketable securities with
9 unrealized appreciation to diversify those
10 holdings without recognition of gain, and
11 “(C) the transfer results, directly or indi-
12 rectly, in diversification of the transferor’s in-
13 terest.”

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

16 "(b) SPECIAL RULE.—Subsection (a) shall not apply
17 to gain realized on a transfer of property to a partnership
18 if, were the partnership incorporated—

19 “(1) such partnership would be treated as an
20 investment company (within the meaning of section
21 351), or

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

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to transfers after the date of action
3 by the Committee on Ways and Means.

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