

107TH CONGRESS  
1ST SESSION

S. 709

To amend the Internal Revenue Code of 1986 to clarify the tax treatment of Alaska Native Settlement Trusts.

IN THE SENATE OF THE UNITED STATES

APRIL 5, 2001

Mr. MURKOWSKI (for himself and Mr. STEVENS) 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 clarify the tax treatment of Alaska Native Settlement Trusts.

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 “Alaska Native Settle-  
5        ment Trust Tax Fairness Act of 2001”.

## 6 SEC. 2. TAX TREATMENT AND INFORMATION REQUIRE-

7                   MENTS OF ALASKA NATIVE SETTLEMENT  
8                   TRUSTS.

(a) TREATMENT OF ALASKA NATIVE SETTLEMENT TRUSTS.—Subpart A of part I of subchapter J of chapter

1 1 of the Internal Revenue Code of 1986 (relating to gen-  
2 eral rules for taxation of trusts and estates) is amended  
3 by adding at the end the following new section:

4 **“SEC. 646. TAX TREATMENT OF ALASKA NATIVE SETTLE-  
5 MENT TRUSTS.**

6 “(a) IN GENERAL.—Except as otherwise provided in  
7 this section, the provisions of this subchapter and section  
8 1(e) shall apply to all Settlement Trusts.

9 “(b) TAXATION OF INCOME OF TRUST.—Except as  
10 provided in subsection (f)(1)(B)(ii)—

11 “(1) IN GENERAL.—There is hereby imposed on  
12 the taxable income of an electing Settlement Trust,  
13 other than its net capital gain, a tax at the lowest  
14 rate specified in section 1.

15 “(2) CAPITAL GAIN.—In the case of an electing  
16 Settlement Trust with a net capital gain for the tax-  
17 able year, a tax is hereby imposed on such gain at  
18 the rate of tax which would apply to such gain if the  
19 taxpayer were subject to a tax on its other taxable  
20 income at only the lowest rate specified in section 1.

21 “(c) ONE-TIME ELECTION.—

22 “(1) IN GENERAL.—A Settlement Trust may  
23 elect to have the provisions of this section apply to  
24 the trust and its beneficiaries.

1                 “(2) TIME AND METHOD OF ELECTION.—An  
2                 election under paragraph (1) shall be made by the  
3                 trustee of such trust—

4                 “(A) on or before the due date (including  
5                 extensions) for filing the Settlement Trust’s re-  
6                 turn of tax for the first taxable year of such  
7                 trust ending after the date of the enactment of  
8                 this section, and

9                 “(B) by attaching to such return of tax a  
10                 statement specifically providing for such elec-  
11                 tion.

12                 “(3) PERIOD ELECTION IN EFFECT.—Except as  
13                 provided in subsection (f), an election under this  
14                 subsection—

15                 “(A) shall apply to the first taxable year  
16                 described in paragraph (2)(A) and all subse-  
17                 quent taxable years, and

18                 “(B) may not be revoked once it is made.

19                 “(d) CONTRIBUTIONS TO TRUST.—

20                 “(1) BENEFICIARIES OF ELECTING TRUST NOT  
21                 TAXED ON CONTRIBUTIONS.—In the case of an  
22                 electing Settlement Trust, no amount shall be in-  
23                 cludible in the gross income of a beneficiary of such  
24                 trust by reason of a contribution to such trust.

1               “(2) EARNINGS AND PROFITS.—The earnings  
2       and profits of the sponsoring Native Corporation  
3       shall not be reduced on account of any contribution  
4       to such Settlement Trust:

5               “(e) TAX TREATMENT OF DISTRIBUTIONS TO BENE-  
6       FICIARIES.—Amounts distributed by an electing Settle-  
7       ment Trust during any taxable year shall be considered  
8       as having the following characteristics in the hands of the  
9       recipient beneficiary:

10               “(1) First, as amounts excludable from gross  
11       income for the taxable year to the extent of the tax-  
12       able income of such trust for such taxable year (de-  
13       creased by any income tax paid by the trust with re-  
14       spect to the income) plus any amount excluded from  
15       gross income of the trust under section 103.

16               “(2) Second, as amounts excludable from gross  
17       income to the extent of the amount described in  
18       paragraph (1) for all taxable years for which an elec-  
19       tion is in effect under subsection (c) with respect to  
20       the trust, and not previously taken into account  
21       under paragraph (1).

22               “(3) Third, as amounts distributed by the spon-  
23       soring Native Corporation with respect to its stock  
24       (within the meaning of section 301(a)) during such  
25       taxable year and taxable to the recipient beneficiary

1 as amounts described in section 301(c)(1), to the ex-  
2 tent of current accumulated earnings and profits of  
3 the sponsoring Native Corporation as of the close of  
4 such taxable year after proper adjustment is made  
5 for all distributions made by the sponsoring Native  
6 Corporation during such taxable year.

7 “(4) Fourth, as amounts distributed by the  
8 trust in excess of the distributable net income of  
9 such trust for such taxable year.

10 Amounts distributed to which paragraph (3) applies shall  
11 not be treated as a corporate distribution subject to sec-  
12 tion 311(b), and for purposes of determining the amount  
13 of a distribution for purposes of paragraph (3) and the  
14 basis to the recipients, section 643(e) and not section  
15 301(b) or (d) shall apply.

16 “(f) SPECIAL RULES WHERE TRANSFER RESTRI-  
17 TIONS MODIFIED.—

18 “(1) TRANSFER OF BENEFICIAL INTERESTS.—  
19 If, at any time, a beneficial interest in an electing  
20 Settlement Trust may be disposed of to a person in  
21 a manner which would not be permitted by section  
22 7(h) of the Alaska Native Claims Settlement Act (43  
23 U.S.C. 1606(h)) if such interest were Settlement  
24 Common Stock—

1                   “(A) no election may be made under sub-  
2                   section (c) with respect to such trust, and

3                   “(B) if such an election is in effect as of  
4                   such time—

5                   “(i) such election shall cease to apply  
6                   as of the first day of the taxable year in  
7                   which such disposition is first permitted,

8                   “(ii) the provisions of this section  
9                   shall not apply to such trust for such tax-  
10                   able year and all taxable years thereafter,  
11                   and

12                   “(iii) the distributable net income of  
13                   such trust shall be increased by the cur-  
14                   rent and accumulated earnings and profits  
15                   of the sponsoring Native Corporation as of  
16                   the close of such taxable year after proper  
17                   adjustment is made for all distributions  
18                   made by the sponsoring Native Corpora-  
19                   tion during such taxable year.

20                   In no event shall the increase under clause (iii) ex-  
21                   ceed the fair market value of the trust's assets as  
22                   of the date the beneficial interest of the trust first  
23                   becomes so disposable. The earnings and profits of  
24                   the sponsoring Native Corporation shall be adjusted  
25                   as of the last day of such taxable year by the

1       amount of earnings and profits so included in the  
2       distributable net income of the trust.

3           “(2) STOCK IN CORPORATION.—If—

4               “(A) the Settlement Common Stock in the  
5       sponsoring Native Corporation may be disposed  
6       of to a person in any manner not permitted by  
7       section 7(h) of the Alaska Native Claims Settle-  
8       ment Act (43 U.S.C. 1606(h)), and

9               “(B) at any time after such disposition of  
10       stock is first permitted, such corporation trans-  
11       fers assets to a Settlement Trust,

12       paragraph (1)(B) shall be applied to such trust on  
13       and after the date of the transfer in the same man-  
14       ner as if the trust permitted dispositions of bene-  
15       ficial interests in the trust in a manner not per-  
16       mitted by such section 7(h).

17           “(3) CERTAIN DISTRIBUTIONS.—For purposes  
18       of this section, the surrender of an interest in a Na-  
19       tive Corporation or an electing Settlement Trust in  
20       order to accomplish the whole or partial redemption  
21       of the interest of a shareholder or beneficiary in  
22       such corporation or trust, or to accomplish the whole  
23       or partial liquidation of such corporation or trust,  
24       shall be deemed to be a transfer permitted by sec-

1       tion 7(h) of the Alaska Native Claims Settlement  
2       Act.

3       “(g) TAXABLE INCOME.—For purposes of this title,  
4       the taxable income of an electing Settlement Trust shall  
5       be determined under section 641(b) without regard to any  
6       deduction under section 651 or 661.

7       “(h) DEFINITIONS.—For purposes of this section—

8           “(1) ELECTING SETTLEMENT TRUST.—The  
9       term ‘electing Settlement Trust’ means a Settlement  
10       Trust which has made the election, effective for a  
11       taxable year, described in subsection (c).

12       “(2) NATIVE CORPORATION.—The term ‘Native  
13       Corporation’ has the meaning given such term by  
14       section 3(m) of the Alaska Native Claims Settlement  
15       Act (43 U.S.C. 1602(m)).

16       “(3) SETTLEMENT COMMON STOCK.—The term  
17       ‘Settlement Common Stock’ has the meaning given  
18       such term by section 3(p) of the Alaska Native  
19       Claims Settlement Act (43 U.S.C. 1602(p)).

20       “(4) SETTLEMENT TRUST.—The term ‘Settle-  
21       ment Trust’ means a trust that constitutes a settle-  
22       ment trust under section 3(t) of the Alaska Native  
23       Claims Settlement Act (43 U.S.C. 1602(t)).

24       “(5) SPONSORING NATIVE CORPORATION.—The  
25       term ‘sponsoring Native Corporation’ means the Na-

1 tive Corporation which transfers assets to an elect-  
2 ing Settlement Trust.

3       “(i) SPECIAL LOSS DISALLOWANCE RULE.—Any loss  
4 that would otherwise be recognized by a shareholder upon  
5 a disposition of a share of stock of a sponsoring Native  
6 Corporation shall be reduced (but not below zero) by the  
7 per share loss adjustment factor. The per share loss ad-  
8 justment factor shall be the aggregate of all contributions  
9 to all electing Settlement Trusts sponsored by such Native  
10 Corporation made on or after the first day each trust is  
11 treated as an electing Settlement Trust expressed on a per  
12 share basis and determined as of the day of each such  
13 contribution

14        "(j) CROSS REFERENCE.—

**“For information required with respect to electing Settlement Trusts and sponsoring Native Corporations, see section 6039H.”.**

15 (b) REPORTING.—Subpart A of part III of sub-  
16 chapter A of chapter 61 of subtitle F of such Code (relat-  
17 ing to information concerning persons subject to special  
18 provisions) is amended by inserting after section 6039G  
19 the following new section:

20 "SEC. 6039H. INFORMATION WITH RESPECT TO ALASKA NA-  
21 TIVE SETTLEMENT TRUSTS AND SPON-  
22 SORING NATIVE CORPORATIONS.

23        "(a) REQUIREMENT.—The fiduciary of an electing  
24 Settlement Trust (as defined in section 646(h)(1)) shall

1 include with the return of income of the trust a statement  
2 containing the information required under subsection (c).

3       **“(b) APPLICATION WITH OTHER REQUIREMENTS.—**  
4 The filing of any statement under this section shall be in  
5 lieu of the reporting requirements under section 6034A  
6 to furnish any statement to a beneficiary regarding  
7 amounts distributed to such beneficiary (and such other  
8 reporting rules as the Secretary deems appropriate).

9       **“(c) REQUIRED INFORMATION.—**The information re-  
10 quired under this subsection shall include—

11           “(1) the amount of distributions made during  
12 the taxable year to each beneficiary,

13           “(2) the treatment of such distribution under  
14 the applicable provision of section 646, including the  
15 amount that is excludable from the recipient bene-  
16 ficiary’s gross income under section 646, and

17           “(3) the amount (if any) of any distribution  
18 during such year that is deemed to have been made  
19 by the sponsoring Native Corporation (as defined in  
20 section 646(h)(5)).

21       **“(d) SPONSORING NATIVE CORPORATION.—**

22           **“(1) IN GENERAL.—**The electing Settlement  
23 Trust shall, on or before the date on which the  
24 statement under subsection (a) is required to be

1       filed, furnish such statement to the sponsoring Na-  
2       tive Corporation (as so defined).

3           “(2) DISTRIBUTEES.—The sponsoring Native  
4       Corporation shall furnish each recipient of a dis-  
5       tribution described in section 646(e)(3) a statement  
6       containing the amount deemed to have been distrib-  
7       uted to such recipient by such corporation for the  
8       taxable year.”.

9           (c) CLERICAL AMENDMENT.—

10           (1) The table of sections for subpart A of part  
11       I of subchapter J of chapter 1 of such Code is  
12       amended by adding at the end the following new  
13       item:

“Sec. 646. Tax treatment of Alaska Native Settlement Trusts.”.

14           (2) The table of sections for subpart A of part  
15       III of subchapter A of chapter 61 of subtitle F of  
16       such Code is amended by inserting after the item re-  
17       lating to section 6039G the following new item:

“Sec. 6039H. Information with respect to Alaska Native Settle-  
ment Trusts and sponsoring Native Corporations.”.

18           (d) EFFECTIVE DATE.—The amendments made by  
19       this section shall apply to taxable years ending after the  
20       date of the enactment of this Act and to contributions  
21       made to electing Settlement Trusts for such year or any  
22       subsequent year.

