

107TH CONGRESS
1ST SESSION

S. 818

To amend the Internal Revenue Code of 1986 to provide a long-term capital gains exclusion for individuals, and to reduce the holding period for long-term capital gain treatment to 6 months, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 2, 2001

Mr. HATCH (for himself, Mr. TORRICELLI, Mr. KYL, and Mr. MURKOWSKI) 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 provide a long-term capital gains exclusion for individuals, and to reduce the holding period for long-term capital gain treatment to 6 months, 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,*

3 **SECTION. 1. SHORT TITLE.**

4 This Act may be cited as the “Capital Gains Relief
5 and Simplification Act of 2001”.

1 **SEC. 2. LONG-TERM CAPITAL GAINS DEDUCTION FOR INDIVIDUALS.**
 2

3 (a) GENERAL RULE.—Part I of subchapter P of
 4 chapter 1 of the Internal Revenue Code of 1986 (relating
 5 to treatment of capital gains) is amended by redesignating
 6 section 1202 as section 1203 and by inserting after section
 7 1201 the following new section:

8 **“SEC. 1202. CAPITAL GAINS DEDUCTION FOR INDIVIDUALS.**

9 “(a) IN GENERAL.—In the case of an individual,
 10 there shall be allowed as a deduction for the taxable year
 11 an amount equal to the sum of—

12 “(1) the lesser of—

13 “(A) the net capital gain of the taxpayer
 14 for the taxable year, or

15 “(B) \$1,000 (\$2,000 in the case of a joint
 16 return), and

17 “(2) 50 percent of such gain not taken into ac-
 18 count under paragraph (1).

19 “(b) SALES BETWEEN RELATED PARTIES.—Gains
 20 from sales and exchanges to any related person (within
 21 the meaning of section 267(b) or 707(b)(1)) shall not be
 22 taken into account in determining net capital gain.

23 “(c) SPECIAL RULE FOR SECTION 1250 PROP-
 24 erty.—Solely for purposes of this section, in applying sec-
 25 tion 1250 to any disposition of section 1250 property, all

1 depreciation adjustments in respect of the property shall
 2 be treated as additional depreciation.

3 “(d) SECTION NOT TO APPLY TO CERTAIN TAX-
 4 PAYERS.—No deduction shall be allowed under this section
 5 to—

6 “(1) an individual with respect to whom a de-
 7 duction under section 151 is allowable to another
 8 taxpayer for a taxable year beginning in the cal-
 9 endar year in which such individual’s taxable year
 10 begins,

11 “(2) a married individual (within the meaning
 12 of section 7703) filing a separate return for the tax-
 13 able year, or

14 “(3) an estate or trust.

15 “(e) SPECIAL RULE FOR PASS-THRU ENTITIES.—

16 “(1) IN GENERAL.—In applying this section
 17 with respect to any pass-thru entity, the determina-
 18 tion of when the sale or exchange occurs shall be
 19 made at the entity level.

20 “(2) PASS-THRU ENTITY DEFINED.—For pur-
 21 poses of paragraph (1), the term ‘pass-thru entity’
 22 means—

23 “(A) a regulated investment company,

24 “(B) a real estate investment trust,

25 “(C) an S corporation,

1 “(D) a partnership,
 2 “(E) an estate or trust, and
 3 “(F) a common trust fund.”

4 (b) COORDINATION WITH MAXIMUM CAPITAL GAINS
 5 RATE.—

6 (1) IN GENERAL.—Paragraph (3) of section
 7 1(h) of the Internal Revenue Code of 1986 (relating
 8 to maximum capital gains rate) is amended to read
 9 as follows:

10 “(3) COORDINATION WITH OTHER PROVI-
 11 SIONS.—For purposes of this subsection, the amount
 12 of the net capital gain shall be reduced (but not
 13 below zero) by the sum of—

14 “(A) the amount of the net capital gain
 15 taken into account under section 1202(a) for
 16 the taxable year, plus

17 “(B) the amount which the taxpayer elects
 18 to take into account as investment income for
 19 the taxable year under section
 20 163(d)(4)(B)(iii).”

21 (2) CONFORMING AMENDMENTS.—Paragraphs
 22 (5)(A)(ii), (8), and (9) of section 1(h) of such Code
 23 are amended by striking “1202” each place it ap-
 24 pears and inserting “1203”.

1 (c) DEDUCTION ALLOWABLE IN COMPUTING AD-
 2 JUSTED GROSS INCOME.—Subsection (a) of section 62
 3 (defining adjusted gross income) is amended by inserting
 4 after paragraph (17) the following new paragraph:

5 “(18) LONG-TERM CAPITAL GAINS.—The de-
 6 duction allowed by section 1202.”

7 (d) TREATMENT OF COLLECTIBLES.—

8 (1) IN GENERAL.—Section 1222 of the Internal
 9 Revenue Code of 1986 (relating to other terms relat-
 10 ing to capital gains and losses) is amended by in-
 11 serting after paragraph (11) the following new para-
 12 graph:

13 “(12) SPECIAL RULE FOR COLLECTIBLES.—

14 “(A) IN GENERAL.—Any gain or loss from
 15 the sale or exchange of a collectible shall be
 16 treated as a short-term capital gain or loss (as
 17 the case may be), without regard to the period
 18 such asset was held. The preceding sentence
 19 shall apply only to the extent the gain or loss
 20 is taken into account in computing taxable in-
 21 come.

22 “(B) TREATMENT OF CERTAIN SALES OF
 23 INTEREST IN PARTNERSHIP, ETC.—For pur-
 24 poses of subparagraph (A), any gain from the
 25 sale or exchange of an interest in a partnership,

1 S corporation, or trust which is attributable to
 2 unrealized appreciation in the value of collect-
 3 ibles held by such entity shall be treated as gain
 4 from the sale or exchange of a collectible. Rules
 5 similar to the rules of section 751(f) shall apply
 6 for purposes of the preceding sentence.

7 “(C) COLLECTIBLE.—For purposes of this
 8 paragraph, the term ‘collectible’ means any cap-
 9 ital asset which is a collectible (as defined in
 10 section 408(m) without regard to paragraph (3)
 11 thereof).”

12 (2) CHARITABLE DEDUCTION NOT AF-
 13 FECTED.—

14 (A) Paragraph (1) of section 170(e) of
 15 such Code is amended by adding at the end the
 16 following new sentence: “For purposes of this
 17 paragraph, section 1222 shall be applied with-
 18 out regard to paragraph (12) thereof (relating
 19 to special rule for collectibles).”

20 (B) Clause (iv) of section 170(b)(1)(C) of
 21 such Code is amended by inserting before the
 22 period at the end the following: “and section
 23 1222 shall be applied without regard to para-
 24 graph (12) thereof (relating to special rule for
 25 collectibles)”.

1 (e) CONFORMING AMENDMENTS.—

2 (1) Section 57(a)(7) of the Internal Revenue
3 Code of 1986 is amended by striking “1202” and in-
4 serting “1203”.

5 (2) Clause (iii) of section 163(d)(4)(B) of such
6 Code is amended to read as follows:

7 “(iii) the sum of—

8 “(I) the portion of the net capital
9 gain referred to in clause (ii)(II) (or,
10 if lesser, the net capital gain referred
11 to in clause (ii)(I)) taken into account
12 under section 1202, reduced by the
13 amount of the deduction allowed with
14 respect to such gain under section
15 1202, plus

16 “(II) so much of the gain de-
17 scribed in subclause (I) which is not
18 taken into account under section 1202
19 and which the taxpayer elects to take
20 into account under this clause.”

21 (3) Subparagraph (B) of section 172(d)(2) of
22 such Code is amended to read as follows:

23 “(B) the deduction under section 1202 and
24 the exclusion under section 1203 shall not be
25 allowed.”

1 (4) Section 642(c)(4) of such Code is amended
2 by striking “1202” both places it appears and in-
3 serting “1203”.

4 (5) Section 643(a)(3) of such Code is amended
5 by striking “1202” and inserting “1203”.

6 (6) Paragraph (4) of section 691(c) of such
7 Code is amended inserting “1203,” after “1202,”.

8 (7) The second sentence of section 871(a)(2) of
9 such Code is amended by inserting “or 1203” after
10 “section 1202”.

11 (8) The last sentence of section 1044(d) of such
12 Code is amended by striking “1202” and inserting
13 “1203”.

14 (9) Paragraphs (1), (4)(B), and (5) of section
15 1045(b) of such Code are amended by striking
16 “1202” each place it appears and inserting “1203”.

17 (10) Section 1397B(b)(4) of such Code is
18 amended by striking “1202” and inserting “1203”.

19 (11) Section 1400B(b)(2)(B) of such Code is
20 amended by striking “section 1202(c)(3)” and in-
21 serting “section 1203(c)(3)”.

22 (12) Section 1400B(f) of such Code is amended
23 by striking “section 1202” and inserting “section
24 1203”.

1 (13) Paragraph (1) of section 1402(i) of such
 2 Code is amended by inserting “, and the deduction
 3 provided by section 1202 and the exclusion provided
 4 by section 1203 shall not apply” before the period
 5 at the end.

6 (14) Section 6652(k) of such Code is amended
 7 by striking “1202” both places it appears and in-
 8 serting “1203”.

9 (15) Section 121 of such Code is amended by
 10 adding at the end the following new subsection:

11 “(h) CROSS REFERENCE.—

**“For treatment of eligible gain not excluded under
 subsection (a), see section 1202.”**

12 (16) Section 1203 of such Code, as redesign-
 13 ated by subsection (a), is amended by adding at the
 14 end the following new subsection:

15 “(l) CROSS REFERENCE.—

**“For treatment of eligible gain not excluded under
 subsection (a), see section 1202.”**

16 (17) The table of sections for part I of sub-
 17 chapter P of chapter 1 of such Code is amended by
 18 striking the item relating to section 1202 and by in-
 19 serting after the item relating to section 1201 the
 20 following new items:

“Sec. 1202. Capital gains deduction.

“Sec. 1203. 50-percent exclusion for gain from certain small
 business stock.”

21 (f) EFFECTIVE DATES.—

1 (1) IN GENERAL.—Except as provided in para-
 2 graph (2), the amendments made by this section
 3 shall apply to taxable years beginning after Decem-
 4 ber 31, 2001.

5 (2) COLLECTIBLES.—The amendments made by
 6 subsection (d) shall apply to sales and exchanges
 7 after December 31, 2001.

8 **SEC. 3. DECREASE IN HOLDING PERIOD REQUIRED FOR**
 9 **LONG-TERM CAPITAL GAIN TREATMENT.**

10 (a) IN GENERAL.—

11 (1) CAPITAL GAIN.—Paragraphs (1) and (3) of
 12 section 1222 of the Internal Revenue Code of 1986
 13 (relating to other terms relating to capital gains and
 14 losses) are each amended by striking “1 year” and
 15 inserting “6 months”.

16 (2) CAPITAL LOSSES.—Paragraphs (2) and (4)
 17 of section 1222 of such Code are each amended by
 18 striking “1 year” and inserting “6 months”.

19 (b) CONFORMING AMENDMENTS.—The following pro-
 20 visions of the Internal Revenue Code of 1986 are each
 21 amended by striking “1 year” each place it appears and
 22 inserting “6 months”:

23 (1) Section 1(h)(6)(A).

24 (2) Section 166(d)(1)(B).

25 (3) Section 422(a)(1).

1 (4) Section 423(a)(1).

2 (5) Section 584(c).

3 (6) Subsections (b) and (c) of section 631.

4 (7) Section 642(c)(3).

5 (8) Paragraphs (1) and (2) of section 702(a).

6 (9) Section 818(b)(1).

7 (10) Section 852(b)(3)(B).

8 (11) Section 857(b)(3)(B).

9 (12) Paragraphs (11) and (12) of section 1223.

10 (13) Section 1231.

11 (14) Subsections (b), (d), and (e)(4)(A) of sec-
12 tion 1233.

13 (15) Section 1234(b)(1).

14 (16) Section 1235(a).

15 (17) Section 1246(a)(4).

16 (18) Section 1247(i).

17 (19) Subsections (b) and (g)(2)(C) of section
18 1248.

19 (c) TECHNICAL AMENDMENT.—The first sentence of
20 section 631(a) of the Internal Revenue Code of 1986 is
21 amended by striking “for a period of more than one year”
22 and inserting “on the first day of such year and for a
23 period of more than 6 months before such cutting”.

1 (d) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to dispositions after December 31,
 3 2001.

4 **SEC. 4. TREATMENT OF CAPITAL LOSSES OF TAXPAYERS**
 5 **OTHER THAN CORPORATIONS.**

6 (a) INCREASE IN LIMITATION ON LOSSES ALLOW-
 7 ABLE AGAINST ORDINARY INCOME.—Section 1211(b)(1)
 8 of the Internal Revenue Code of 1986 (relating to limita-
 9 tion on capital losses of taxpayers other than corporations)
 10 is amended—

11 (1) by striking “\$3,000” and inserting
 12 “\$10,000”, and

13 (2) by striking “\$1,500” and inserting “an
 14 amount equal to one-half of such amount (as in ef-
 15 fect for the taxable year)”.

16 (b) INDEXING OF AMOUNT.—Section 1211 of the In-
 17 ternal Revenue Code of 1986 is amended by adding at the
 18 end the following:

19 “(c) COST-OF-LIVING ADJUSTMENT.—

20 “(1) IN GENERAL.—In the case of any taxable
 21 year beginning after 2001, the \$10,000 amount re-
 22 ferred to in subsection (b)(1) shall be increased by
 23 an amount equal to—

24 “(A) such dollar amount, multiplied by

1 “(B) the cost-of-living adjustment deter-
 2 mined under section (1)(f)(3) for the calendar
 3 year in which the taxable year begins, by sub-
 4 stituting ‘2000’ for ‘1992’.

5 “(2) ROUNDING.—If any amount as adjusted
 6 under paragraph (1) is not a multiple of \$100, such
 7 amount shall be rounded to the nearest multiple of
 8 \$100.”.

9 (c) EFFECTIVE DATE.—The amendments made by
 10 this section shall apply to capital losses arising in taxable
 11 years beginning after December 31, 2000.

12 **SEC. 5. MODIFICATION OF EXCLUSION OF CAPITAL GAINS**
 13 **ON SALE OF PRINCIPAL RESIDENCE.**

14 (a) SPECIAL RULE FOR MEMBERS OF UNIFORMED
 15 SERVICES AND FOREIGN SERVICE, AND OTHER EMPLOY-
 16 EES, IN DETERMINING EXCLUSION.—

17 (1) IN GENERAL.—Subsection (d) of section
 18 121 of the Internal Revenue Code of 1986 (relating
 19 to exclusion of gain from sale of principal residence)
 20 is amended by adding at the end the following new
 21 paragraphs:

22 “(9) MEMBERS OF UNIFORMED SERVICES AND
 23 FOREIGN SERVICE.—

24 “(A) IN GENERAL.—The running of the 5-
 25 year period described in subsection (a) shall be

1 suspended with respect to an individual during
 2 any time that such individual or such individ-
 3 ual’s spouse is serving on qualified official ex-
 4 tended duty as a member of the uniformed
 5 services or of the Foreign Service.

6 “(B) QUALIFIED OFFICIAL EXTENDED
 7 DUTY.—For purposes of this paragraph—

8 “(i) IN GENERAL.—The term ‘quali-
 9 fied official extended duty’ means any pe-
 10 riod of extended duty as a member of the
 11 uniformed services or a member of the
 12 Foreign Service during which the member
 13 serves at a duty station which is at least
 14 50 miles from such property or is under
 15 Government orders to reside in Govern-
 16 ment quarters.

17 “(ii) UNIFORMED SERVICES.—The
 18 term ‘uniformed services’ has the meaning
 19 given such term by section 101(a)(5) of
 20 title 10, United States Code, as in effect
 21 on the date of the enactment of the Tax-
 22 payer Refund and Relief Act of 1999.

23 “(iii) FOREIGN SERVICE OF THE
 24 UNITED STATES.—The term ‘member of
 25 the Foreign Service’ has the meaning given

1 the term ‘member of the Service’ by para-
 2 graph (1), (2), (3), (4), or (5) of section
 3 103 of the Foreign Service Act of 1980,
 4 as in effect on the date of the enactment
 5 of the Taxpayer Refund and Relief Act of
 6 1999.

7 “(iv) EXTENDED DUTY.—The term
 8 ‘extended duty’ means any period of active
 9 duty pursuant to a call or order to such
 10 duty for a period in excess of 90 days or
 11 for an indefinite period.

12 “(10) OTHER EMPLOYEES.—

13 “(A) IN GENERAL.—The running of the 5-
 14 year period described in subsection (a) shall be
 15 suspended with respect to an individual during
 16 any time that such individual or such individ-
 17 ual’s spouse is serving as an employee for a pe-
 18 riod in excess of 90 days in an assignment by
 19 such employee’s employer outside the United
 20 States.

21 “(B) LIMITATIONS AND SPECIAL RULES.—

22 “(i) MAXIMUM PERIOD OF SUSPEN-
 23 SION.—The suspension under subpara-
 24 graph (A) with respect to a principal resi-

dence shall not exceed (in the aggregate) 5 years.

“(ii) MEMBERS OF UNIFORMED SERVICES AND FOREIGN SERVICE.—Subparagraph (A) shall not apply to an individual to whom paragraph (9) applies.

“(iii) SELF-EMPLOYED INDIVIDUAL NOT CONSIDERED AN EMPLOYEE.—For purposes of this paragraph, the term ‘employee’ does not include an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).”.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to sales and exchanges after the date of the enactment of this Act.

(b) INDEXING OF EXCLUSION.—

(1) IN GENERAL.—Section 121(b)(1) of the Internal Revenue Code of 1986 (relating to limitations) is amended by striking “\$250,000” and inserting “applicable amount”.

(2) APPLICABLE AMOUNT.—Section 121(b) of such Code is amended by adding at the end the following new paragraph:

“(4) APPLICABLE AMOUNT.—

“(A) IN GENERAL.—For purposes of this section, the term ‘applicable amount’ means \$250,000.

“(B) INFLATION ADJUSTMENT.—

“(i) IN GENERAL.—In the case of a taxable year beginning in any calendar year after 2001, the \$250,000 amount under subparagraph (a) shall be increased by an amount equal to—

“(I) such dollar amount, multiplied by

“(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2000’ for ‘calendar year 1992’ in subparagraph (B) thereof.

“(ii) ROUNDING.—If any amount as adjusted under clause (i) is not a multiple of \$1,000, such amount shall be rounded to the next lowest multiple of \$1,000.”.

(2) CONFORMING AMENDMENTS.—Section 121(b)(2)(A) of such Code (relating to \$500,000 limitation for certain joint returns) is amended—

1 (A) by striking “substituting” and all that
2 follows through “if” and inserting “substituting
3 an amount equal to 200 percent of the applica-
4 ble amount in effect under such paragraph for
5 the taxable year for ‘the applicable amount’ if”,
6 and

7 (B) by striking “\$500,000” in the heading
8 and inserting “INCREASED”.

9 (3) EFFECTIVE DATE.—The amendments made
10 by this subsection shall apply to taxable years begin-
11 ning after December 31, 2001.

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