

108TH CONGRESS  
1ST SESSION

# H. R. 1498

To amend the Internal Revenue Code of 1986 to provide that the tax on recognized built-in gain of an S corporation shall not apply to amounts reinvested in the business.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 27, 2003

Mr. RAMSTAD (for himself, Mr. CRANE, Mrs. JOHNSON of Connecticut, Mr. HERGER, Mr. CAMP, Mr. SAM JOHNSON of Texas, Mr. ENGLISH, Mr. WELLER, Mr. MCINNIS, Mr. FOLEY, Mr. BRADY of Texas, and Mr. COX) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to provide that the tax on recognized built-in gain of an S corporation shall not apply to amounts reinvested in the business.

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 “Small Business Oppor-  
5 tunity and Growth Act of 2003”.

1 **SEC. 2. EXCEPTION FROM TAX ON RECOGNIZED BUILT-IN**  
2 **GAIN OF S CORPORATIONS.**

3 (a) IN GENERAL.—Section 1374 of the Internal Rev-  
4 enue Code of 1986 (relating to tax imposed on certain  
5 built-in gains) is amended by redesignating subsection (e)  
6 as subsection (f) and by inserting after subsection (d) the  
7 following new subsection:

8 “(e) EXCEPTION FOR REINVESTED AMOUNTS.—

9 “(1) IN GENERAL.—If an existing S corporation  
10 has a net recognized built-in gain for any taxable  
11 year in the recognition period (determined by taking  
12 into account only assets held on March 27, 2003)  
13 and elects the application of this subsection, the  
14 amount of such gain on which tax is imposed by  
15 subsection (a) shall not exceed the amount equal to  
16 the excess of—

17 “(A) the amount realized on the disposi-  
18 tion of those assets that resulted in such gain,  
19 over

20 “(B) the excess of—

21 “(i) the aggregate qualified expendi-  
22 tures made by the S corporation during  
23 the nonrecognition period, over

24 “(ii) the portion (if any) of such ex-  
25 penditures previously taken into account  
26 under this subsection.

1           “(2) PAYMENT OF TAX.—If—

2                   “(A) the return of an S corporation shows  
3           that no tax is required to be paid on an amount  
4           of recognized built-in gain for any taxable year  
5           by reason of paragraph (1) because the S cor-  
6           poration anticipates making qualified expendi-  
7           tures during the succeeding taxable year, and

8                   “(B) as of the close of such succeeding  
9           taxable year, tax is required to be paid on such  
10          amount because of the failure to make such ex-  
11          penditures,

12          then the tax imposed by this chapter for the first  
13          taxable year of the nonrecognition period shall be in-  
14          creased by 10 percent of the increase in tax (deter-  
15          mined without regard to this paragraph) for such  
16          year by reason of the failure to make such expendi-  
17          tures.

18           “(3) QUALIFIED EXPENDITURES.—For pur-  
19          poses of this subsection, the term ‘qualified expendi-  
20          tures’ means—

21                   “(A) amounts chargeable to capital ac-  
22           count for property used in a trade or business  
23           of the S corporation,

24                   “(B) payments of principal and interest on  
25           pre-effective date debt of the S corporation, and

1           “(C) amounts distributed to shareholders  
2           to the extent such amounts do not exceed the  
3           aggregate of such shareholders’ tax imposed by  
4           this chapter (and State and local taxes) on  
5           amounts attributable to the disposition of those  
6           assets that resulted in such net recognized  
7           built-in gain.

8           Payments of principal as part of a refinancing of  
9           pre-effective date debt shall not be taken into ac-  
10          count under subparagraph (B).

11           “(4) NONRECOGNITION PERIOD.—For purposes  
12          of this subsection, the term ‘nonrecognition period’  
13          means, with respect to a taxable year for which an  
14          S corporation has a net recognized built-in gain,  
15          such taxable year and the succeeding taxable year.

16           “(5) PRE-EFFECTIVE DATE DEBT.—For pur-  
17          poses of paragraph (2)(B), the term ‘pre-effective  
18          date debt’ means—

19                   “(A) debt incurred before March 27, 2003,  
20                   and

21                   “(B) debt incurred on or after such date to  
22                   refinance debt described in subparagraph (A)  
23                   (or refinanced indebtedness meeting the re-  
24                   quirements of this subparagraph) to the extent  
25                   that (immediately after the refinancing) the

1 principal amount of the indebtedness resulting  
2 from the refinancing does not exceed the prin-  
3 cipal amount of the refinanced indebtedness  
4 (immediately before the refinancing).

5 “(6) ANTI-ABUSE RULE.—Solely for purposes of  
6 determining the treatment of distributions to share-  
7 holders under section 1368 during the recognition  
8 period—

9 “(A) any increase in the accumulated ad-  
10 justment account and shareholder basis by rea-  
11 son of the disposition of those assets that re-  
12 sulted in the net recognized built-in gain shall  
13 not exceed the amounts described in paragraph  
14 (2)(C), and

15 “(B) any increase in such account and  
16 shareholder basis which is not permitted under  
17 subparagraph (A) shall occur immediately after  
18 the recognition period.

19 “(7) EXISTING S CORPORATION.—The term ‘ex-  
20 isting S corporation’ means any S corporation for  
21 which an election under section 1362 is filed before  
22 March 27, 2003.”

23 (b) EFFECTIVE DATE.—The amendment made by  
24 this section shall apply to taxable years beginning during  
25 or after the calendar year which includes the date of the

- 1 enactment of this Act but only with respect to built-in gain
- 2 recognized after such date.

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