

108TH CONGRESS
1ST SESSION

H. R. 3485

To amend the Internal Revenue Code of 1986 to provide an incentive to preserve affordable housing in multifamily housing units which are sold or exchanged.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 12, 2003

Mr. RAMSTAD (for himself and Mr. CARDIN) 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 provide an incentive to preserve affordable housing in multifamily housing units which are sold or exchanged.

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 “Affordable Housing
5 Preservation Tax Relief Act of 2003”.

6 **SEC. 2. AFFORDABLE HOUSING PRESERVATION CREDIT.**

7 (a) IN GENERAL.—Subpart D of part IV of sub-
8 chapter A of chapter 1 of the Internal Revenue Code of

1 1986 (relating to business-related credits) is amended by
 2 inserting after section 42 the following new section:

3 **“SEC. 42A. AFFORDABLE HOUSING PRESERVATION CREDIT.**

4 “(a) GENERAL RULE.—For purposes of section 38,
 5 the affordable housing preservation credit determined
 6 under this section for the taxable year is an amount equal
 7 to the preservation allocation amount for the taxable year.

8 “(b) LIMITATIONS.—The amount allowed as a credit
 9 to a taxpayer under subsection (a) with respect to a quali-
 10 fied preservation sale shall not exceed the gain recognized
 11 by the taxpayer from such sale.

12 “(c) PRESERVATION ALLOCATION AMOUNT.—For
 13 purposes of subsection (a)—

14 “(1) IN GENERAL.—The term ‘preservation al-
 15 location amount’ means the amount allocated to the
 16 taxpayer from a qualified preservation sale by a
 17 housing credit agency.

18 “(2) LIMITATION.—The amount allocated under
 19 paragraph (1) shall not exceed the excess of—

20 “(A) the product of—

21 “(i) the maximum rate tax under sec-
 22 tion 1 in the case of an individual or sec-
 23 tion 11 in the case of a corporation, multi-
 24 plied by

1 “(ii) the gain recognized by the tax-
2 payer from the qualified preservation sale,
3 over

4 “(B) the amount of cash or the fair mar-
5 ket value of other property received by the tax-
6 payer with respect to the sale.

7 “(d) QUALIFIED PRESERVATION SALE.—For pur-
8 poses of this section—

9 “(1) IN GENERAL.—The term ‘qualified preser-
10 vation sale’ means a sale of eligible multifamily
11 housing property to or an exchange of such property
12 with a preservation entity which agrees to maintain
13 affordability and use restrictions regarding the prop-
14 erty that are—

15 “(A) for a term of not less than the ex-
16 tended use period,

17 “(B) legally enforceable, and

18 “(C) consistent with the long-term physical
19 and financial viability and character of such
20 housing as affordable housing.

21 Such restrictions shall be binding on all successors
22 of the preservation entity and shall be recorded as
23 a restrictive covenant on the property pursuant to
24 State law.

1 “(2) ELIGIBLE MULTIFAMILY HOUSING PROP-
2 ERTY.—The term ‘eligible multifamily housing prop-
3 erty’ means—

4 “(A) property assisted under section
5 221(d)(3) or section 236 of the National Hous-
6 ing Act and with respect to which the owner is
7 subject to the restrictions described in section
8 1039(b)(1)(B) of such Act (as in effect on the
9 day before the date of the enactment of the
10 Revenue Reconciliation Act of 1990),

11 “(B) property described in section
12 512(2)(B) of the Multifamily Assisted Housing
13 Reform and Affordability Act of 1997 (42
14 U.S.C. 1437f note),

15 “(C) property with respect to which a loan
16 is made or insured under title V of the Housing
17 Act of 1949, and

18 “(D) property that either received an allo-
19 cation of low-income housing tax credit pursu-
20 ant to paragraph (1) of section 42(h) or was
21 exempted from such paragraph by paragraph
22 (4) of such section.

23 “(3) AFFORDABLE HOUSING.—The term ‘af-
24 fordable housing’ means housing which is a qualified

1 low-income housing project (as defined in section
2 42(g)).

3 “(4) EXTENDED USE PERIOD.—The term ‘ex-
4 tended use period’ means the period beginning on
5 the date of sale and ending on the earlier of—

6 “(A) 30 years after the close of the sale,
7 or

8 “(B) the date that the property is acquired
9 by foreclosure (or instrument in lieu of fore-
10 closure).

11 Subparagraph (B) shall not apply if the Secretary
12 determines that the acquisition described therein is
13 part of an arrangement with the owner a purpose of
14 which is to terminate the extended use period.

15 “(5) PRESERVATION ENTITY.—The term ‘pres-
16 ervation entity’ means a housing credit agency or an
17 organization approved by a housing credit agency
18 that has the capacity and commitment to success-
19 fully acquire and preserve eligible multifamily hous-
20 ing property. Such preservation entity shall be inde-
21 pendent from the seller partnership or its affiliates.

22 “(e) ALLOCATION BY HOUSING CREDIT AGENCY.—
23 For purposes of this section—

24 “(1) IN GENERAL.—The aggregate preservation
25 credit dollar amount which a housing credit agency

1 may allocate for any calendar year is the portion of
2 the State preservation credit ceiling allocated under
3 this subsection for such calendar year to such agen-
4 cy.

5 “(2) STATE CEILING INITIALLY ALLOCATED TO
6 HOUSING CREDIT AGENCIES.—Except as provided in
7 paragraph (4), the State preservation credit ceiling
8 for each calendar year shall be allocated to the hous-
9 ing credit agency of such State. If there is more
10 than 1 housing credit agency of a State, all such
11 agencies shall be treated as a single agency.

12 “(3) STATE PRESERVATION CREDIT CEILING.—
13 The State preservation credit ceiling applicable to
14 any State and any calendar year shall be an amount
15 equal to the sum of—

16 “(A) the unused State preservation credit
17 ceiling (if any) of such State for the preceding
18 calendar year,

19 “(B) the sum of—

20 “(i) \$1.00 multiplied by the State
21 population,

22 “(ii) \$1,000,000,

23 “(iii) the amount of State preserva-
24 tion credit ceiling returned in the calendar
25 year, plus

1 “(iv) the amount (if any) allocated
2 under paragraph (4) to such State by the
3 Secretary.

4 For purposes of clause (i), the unused State
5 preservation credit ceiling for any calendar year
6 is the excess (if any) of the sum of the amounts
7 described in clauses (ii) through (iv) over the
8 aggregate preservation credit dollar amount al-
9 located for such year.

10 “(4) UNALLOCATED CREDIT.—

11 “(A) IN GENERAL.—In the event that a
12 State does not allocate all of its preservation
13 credit, such unallocated credit shall be allocated
14 among qualified States for the succeeding cal-
15 endar year.

16 “(B) QUALIFIED STATE.—For purposes of
17 subparagraph (A), the term ‘qualified State’
18 means, with respect to a calendar year, any
19 State which allocates its entire State preserva-
20 tion credit from the preceding calendar year
21 and for which a request is made to receive an
22 allocation under subparagraph (C).

23 “(C) UNUSED PRESERVATION CREDIT CAR-
24 RYOVER.—For purposes of this paragraph, the

1 unused preservation credit carryover of a State
 2 for any calendar year is the excess (if any) of—

3 “(i) the unused State preservation
 4 credit ceiling for the year preceding such
 5 year, over

6 “(ii) the aggregate preservation credit
 7 dollar amount allocated for such year.

8 “(D) ALLOCATED AMOUNT.—The amount
 9 allocated under this paragraph is the amount
 10 determined by the Secretary to bear the same
 11 ratio to the aggregate unused preservation cred-
 12 it carryover of all States from the preceding
 13 calendar year as the population of the State
 14 bears to the population of all qualified States
 15 for the calendar year. For purpose of the pre-
 16 ceding sentence, population shall be determined
 17 in accordance with section 146(j).

18 “(5) HOUSING CREDIT AGENCY DEFINED.—The
 19 term ‘housing credit agency’ has the meaning given
 20 such term by section 42(h)(8)(A).

21 “(f) RESPONSIBILITIES OF HOUSING CREDIT AGEN-
 22 CY.—The housing credit agency (or an agent or other pri-
 23 vate contractor of such agency) shall—

24 “(1) determine whether the preservation enti-
 25 ty’s plan for rehabilitation (if any) and operation of

1 the eligible multifamily housing property is viable for
2 no less than 30 years,

3 “(2) monitor the affordability and use restric-
4 tions for the eligible multifamily housing property,
5 and

6 “(3) notify the Internal Revenue Service as to
7 any portion of such property which is out of compli-
8 ance.

9 “(g) RECAPTURE FOR NONCOMPLIANCE.—If the Sec-
10 retary determines that all or a portion of the multifamily
11 housing property is out of compliance with the require-
12 ments of this section, the taxpayer’s tax under this chap-
13 ter for the taxable year shall be increased by the sum of—

14 “(1) an amount equal to the amount which
15 bears the same ratio to the total credit allowed to
16 the taxpayer under subsection (a) as the taxpayer’s
17 share of the portion of such property which is out
18 of compliance bears to the entire property, plus

19 “(2) interest at the underpayment rate estab-
20 lished under section 6621 on the amount determined
21 under paragraph (1) for each prior taxable year for
22 the period beginning on the due date for filing the
23 return for the taxable year for which the credit was
24 allowed under subsection (a).

1 No deduction shall be allowed under this chapter for inter-
 2 est described in paragraph (2).”.

3 (b) CREDIT TO BE PART OF GENERAL BUSINESS
 4 CREDIT.—Subsection (b) of section 38 of such Code (re-
 5 lating to general business credit) is amended by striking
 6 “plus” at the end of paragraph (14), by striking the period
 7 at the end of paragraph (15) and inserting “, plus”, and
 8 by adding at the end the following new paragraph:

9 “(16) the affordable housing preservation credit
 10 determined under section 42A(a).”.

11 (c) CONFORMING AMENDMENT.—The table of sec-
 12 tions for subpart D of part IV of subchapter A of chapter
 13 1 of such Code is amended by inserting after the item
 14 relating to section 45F the following new item:

“Sec. 42A. Affordable housing preservation credit.”.

15 (d) EFFECTIVE DATE.—The amendments made by
 16 this section shall apply to taxable years beginning after
 17 December 31, 2003.

○