

108TH CONGRESS
1ST SESSION

H. R. 3527

To amend the Internal Revenue Code of 1986 to exclude from unrelated business taxable income the gain or loss on the sale or exchange of certain brownfield sites, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 2003

Mrs. JOHNSON of Connecticut (for herself, Mr. BECERRA, Mr. HOUGHTON, Mr. WELLER, Mr. CARDIN, and 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 exclude from unrelated business taxable income the gain or loss on the sale or exchange of certain brownfield sites, 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,*

1 **SECTION 1. EXCLUSION OF GAIN OR LOSS ON SALE OR EX-**
2 **CHANGE OF CERTAIN BROWNFIELD SITES**
3 **FROM UNRELATED BUSINESS TAXABLE IN-**
4 **COME.**

5 (a) IN GENERAL.—Subsection (b) of section 512 of
6 the Internal Revenue Code of 1986 (relating to unrelated
7 business taxable income) is amended by adding at the end
8 the following new paragraph:

9 “(18) TREATMENT OF GAIN OR LOSS ON SALE
10 OR EXCHANGE OF CERTAIN BROWNFIELD SITES.—

11 “(A) IN GENERAL.—Notwithstanding para-
12 graph (5)(B), there shall be excluded any gain
13 or loss from the qualified sale, exchange, or
14 other disposition of any qualifying brownfield
15 property by an eligible taxpayer.

16 “(B) ELIGIBLE TAXPAYER.—For purposes
17 of this paragraph—

18 “(i) IN GENERAL.—The term ‘eligible
19 taxpayer’ means, with respect to a prop-
20 erty, any organization exempt from tax
21 under section 501(a) which—

22 “(I) acquires from an unrelated
23 person a qualifying brownfield prop-
24 erty, and

25 “(II) pays or incurs eligible re-
26 mediation expenditures with respect to

1 such property in an amount which ex-
2 ceeds the greater of \$550,000 or 12
3 percent of the fair market value of the
4 property at the time such property
5 was acquired by the eligible taxpayer,
6 determined as if there was not a pres-
7 ence of a hazardous substance, pollut-
8 ant, or contaminant on the property
9 which is complicating the expansion,
10 redevelopment, or reuse of the prop-
11 erty.

12 “(ii) EXCEPTION.—Such term shall
13 not include any organization which is—

14 “(I) potentially liable under sec-
15 tion 107 of the Comprehensive Envi-
16 ronmental Response, Compensation,
17 and Liability Act of 1980 with respect
18 to the qualifying brownfield property,

19 “(II) affiliated with any other
20 person which is so potentially liable
21 through any direct or indirect familial
22 relationship or any contractual, cor-
23 porate, or financial relationship (other
24 than a contractual, corporate, or fi-
25 nancial relationship which is created

1 by the instruments by which title to
2 any qualifying brownfield property is
3 conveyed or financed or by a contract
4 of sale of goods or services), or

5 “(III) the result of a reorganiza-
6 tion of a business entity which was so
7 potentially liable.

8 “(C) QUALIFYING BROWNFIELD PROP-
9 erty.—For purposes of this paragraph—

10 “(i) IN GENERAL.—The term ‘quali-
11 fying brownfield property’ means any real
12 property which is certified, before the tax-
13 payer incurs any eligible remediation ex-
14 penditures (other than to obtain a Phase I
15 environmental site assessment), by an ap-
16 propriate State agency (within the mean-
17 ing of section 198(c)(4)) in the State in
18 which such property is located as a
19 brownfield site within the meaning of sec-
20 tion 101(39) of the Comprehensive Envi-
21 ronmental Response, Compensation, and
22 Liability Act of 1980 (as in effect on the
23 date of the enactment of this paragraph).

24 “(ii) REQUEST FOR CERTIFICATION.—
25 Any request by an eligible taxpayer for a

1 certification described in clause (i) shall in-
2 clude a sworn statement by the eligible
3 taxpayer and supporting documentation of
4 the presence of a hazardous substance, pol-
5 lutant, or contaminant on the property
6 which is complicating the expansion, rede-
7 velopment, or reuse of the property given
8 the property's reasonably anticipated fu-
9 ture land uses or capacity for uses of the
10 property (including a Phase I environ-
11 mental site assessment and, if applicable,
12 evidence of the property's presence on a
13 local, State, or Federal list of brownfields
14 or contaminated property) and other envi-
15 ronmental assessments prepared or ob-
16 tained by the taxpayer.

17 “(D) QUALIFIED SALE, EXCHANGE, OR
18 OTHER DISPOSITION.—For purposes of this
19 paragraph—

20 “(i) IN GENERAL.—A sale, exchange,
21 or other disposition of property shall be
22 considered as qualified if—

23 “(I) such property is transferred
24 by the eligible taxpayer to an unre-
25 lated person, and

1 “(II) within 1 year of such trans-
2 fer the eligible taxpayer has received a
3 certification from the Environmental
4 Protection Agency or an appropriate
5 State agency (within the meaning of
6 section 198(c)(4)) in the State in
7 which such property is located that, as
8 a result of the eligible taxpayer’s re-
9 mediation actions, such property
10 would not be treated as a qualifying
11 brownfield property in the hands of
12 the transferee.

13 “(ii) REQUEST FOR CERTIFICATION.—
14 Any request by an eligible taxpayer for a
15 certification described in clause (i) shall be
16 made not later than the date of the trans-
17 fer and shall include a sworn statement by
18 the eligible taxpayer certifying the fol-
19 lowing:

20 “(I) Remedial actions which com-
21 ply with all applicable or relevant and
22 appropriate requirements (consistent
23 with section 121(d) of the Com-
24 prehensive Environmental Response,
25 Compensation, and Liability Act of

1 1980) have been substantially com-
2 pleted, such that there are no haz-
3 arduous substances, pollutants, or con-
4 taminants which complicate the ex-
5 pansion, redevelopment, or reuse of
6 the property given the property's rea-
7 sonably anticipated future land uses
8 or capacity for uses of the property.

9 “(II) The reasonably anticipated
10 future land uses or capacity for uses
11 of the property are more economically
12 productive or environmentally bene-
13 ficial than the uses of the property in
14 existence on the date of the certifi-
15 cation described in subparagraph
16 (C)(i). For purposes of the preceding
17 sentence, use of property as a landfill
18 or other hazardous waste facility shall
19 not be considered more economically
20 productive or environmentally bene-
21 ficial.

22 “(III) A remediation plan has
23 been implemented to bring the prop-
24 erty into compliance with all applica-
25 ble local, State, and Federal environ-

1 mental laws, regulations, and stand-
2 ards and to ensure that the remedi-
3 ation protects human health and the
4 environment.

5 “(IV) The remediation plan de-
6 scribed in subclause (III), including
7 any physical improvements required to
8 remediate the property, is either com-
9 plete or substantially complete, and, if
10 substantially complete, sufficient mon-
11 itoring, funding, institutional controls,
12 and financial assurances have been
13 put in place to ensure the complete
14 remediation of the property in accord-
15 ance with the remediation plan as
16 soon as is reasonably practicable after
17 the sale, exchange, or other disposi-
18 tion of such property.

19 “(V) Public notice that such re-
20 quest for certification would be made
21 was completed before the date of such
22 request. Such notice shall be in the
23 same form and manner as required
24 for public participation required under
25 section 117(a) of the Comprehensive

1 Environmental Response, Compensa-
2 tion, and Liability Act of 1980 (as in
3 effect on the date of the enactment of
4 this paragraph).

5 “(iii) ATTACHMENT TO TAX RE-
6 TURNS.—A copy of each of the requests
7 for certification described in clause (ii) of
8 subparagraph (C) and this subparagraph
9 shall be included in the tax return of the
10 eligible taxpayer (and, where applicable, of
11 the qualifying partnership) for the taxable
12 year during which the transfer occurs.

13 “(E) ELIGIBLE REMEDIATION EXPENDI-
14 TURES.—For purposes of this paragraph—

15 “(i) IN GENERAL.—The term ‘eligible
16 remediation expenditures’ means, with re-
17 spect to any qualifying brownfield prop-
18 erty, any amount paid or incurred by the
19 eligible taxpayer to an unrelated third per-
20 son to obtain a Phase I environmental site
21 assessment of the property, and any
22 amount so paid or incurred after the date
23 of the certification described in subpara-
24 graph (C)(i) for goods and services nec-
25 essary to obtain a certification described in

1 subparagraph (D)(i) with respect to such
2 property, including expenditures—

3 “(I) to manage, remove, control,
4 contain, abate, or otherwise remediate
5 a hazardous substance, pollutant, or
6 contaminant on the property,

7 “(II) to obtain a Phase II envi-
8 ronmental site assessment of the
9 property, including any expenditure to
10 monitor, sample, study, assess, or oth-
11 erwise evaluate the release, threat of
12 release, or presence of a hazardous
13 substance, pollutant, or contaminant
14 on the property,

15 “(III) to obtain environmental
16 regulatory certifications and approvals
17 required to manage the remediation
18 and monitoring of the hazardous sub-
19 stance, pollutant, or contaminant on
20 the property, and

21 “(IV) regardless of whether it is
22 necessary to obtain a certification de-
23 scribed in subparagraph (D)(i)(II), to
24 obtain remediation cost-cap or stop-
25 loss coverage, re-opener or regulatory

1 action coverage, or similar coverage
2 under environmental insurance poli-
3 cies, or financial guarantees required
4 to manage such remediation and mon-
5 itoring.

6 “(ii) EXCEPTIONS.—Such term shall
7 not include—

8 “(I) any portion of the purchase
9 price paid or incurred by the eligible
10 taxpayer to acquire the qualifying
11 brownfield property,

12 “(II) environmental insurance
13 costs paid or incurred to obtain legal
14 defense coverage, owner/operator li-
15 ability coverage, lender liability cov-
16 erage, professional liability coverage,
17 or similar types of coverage,

18 “(III) any amount paid or in-
19 curred to the extent such amount is
20 reimbursed, funded, or otherwise sub-
21 sidized by grants provided by the
22 United States, a State, or a political
23 subdivision of a State for use in con-
24 nection with the property, proceeds of
25 an issue of State or local government

1 obligations used to provide financing
2 for the property the interest of which
3 is exempt from tax under section 103,
4 or subsidized financing provided (di-
5 rectly or indirectly) under a Federal,
6 State, or local program provided in
7 connection with the property, or

8 “(IV) any expenditure paid or in-
9 curred before the date of the enact-
10 ment of this paragraph.

11 For purposes of subclause (III), the Sec-
12 retary may issue guidance regarding the
13 treatment of government-provided funds
14 for purposes of determining eligible reme-
15 diation expenditures.

16 “(F) DETERMINATION OF GAIN OR
17 LOSS.—For purposes of this paragraph, the de-
18 termination of gain or loss shall not include an
19 amount treated as gain which is ordinary in-
20 come with respect to section 1245 or section
21 1250 property, including amounts deducted as
22 section 198 expenses which are subject to the
23 recapture rules of section 198(e), if the tax-
24 payer had deducted such amounts in the com-

1 putation of its unrelated business taxable in-
2 come.

3 “(G) SPECIAL RULES FOR PARTNER-
4 SHIPS.—

5 “(i) IN GENERAL.—In the case of an
6 eligible taxpayer which is a partner of a
7 qualifying partnership which acquires, re-
8 mediates, and sells, exchanges, or other-
9 wise disposes of a qualifying brownfield
10 property, this paragraph shall apply to the
11 eligible taxpayer’s distributive share of the
12 qualifying partnership’s gain or loss from
13 the sale, exchange, or other disposition of
14 such property.

15 “(ii) QUALIFYING PARTNERSHIP.—
16 The term ‘qualifying partnership’ means a
17 partnership which—

18 “(I) has a partnership agreement
19 which satisfies the requirements of
20 section 514(c)(9)(B)(vi) at all times
21 beginning on the date of the first cer-
22 tification received by the partnership
23 under subparagraph (C)(i),

24 “(II) satisfies the requirements
25 of subparagraphs (B)(i), (C), (D), and

1 (E), if ‘qualified partnership’ is sub-
2 stituted for ‘eligible taxpayer’ each
3 place it appears therein (except sub-
4 paragraph (D)(iii)), and

5 “(III) is not an organization
6 which would be prevented from consti-
7 tuting an eligible taxpayer by reason
8 of subparagraph (B)(ii).

9 “(iii) REQUIREMENT THAT TAX-EX-
10 EMPT PARTNER BE A PARTNER SINCE
11 FIRST CERTIFICATION.—This paragraph
12 shall apply with respect to any eligi-
13 ble taxpayer which is a partner of a partnership
14 which acquires, remediates, and sells, ex-
15 changes, or otherwise disposes of a quali-
16 fying brownfield property only if such eligi-
17 ble taxpayer was a partner of the quali-
18 fying partnership at all times beginning on
19 the date of the first certification received
20 by the partnership under subparagraph
21 (C)(i) and ending on the date of the sale,
22 exchange, or other disposition of the prop-
23 erty by the partnership.

24 “(iv) REGULATIONS.—The Secretary
25 shall prescribe such regulations as are nec-

1 essary to prevent abuse of the require-
2 ments of this subparagraph, including
3 abuse through—

4 “(I) the use of special allocations
5 of gains or losses, or

6 “(II) changes in ownership of
7 partnership interests held by eligible
8 taxpayers.

9 “(H) SPECIAL RULES FOR MULTIPLE
10 PROPERTIES.—

11 “(i) IN GENERAL.—An eligible tax-
12 payer or a qualifying partnership of which
13 the eligible taxpayer is a partner may
14 make a 1-time election to apply this para-
15 graph to more than 1 qualifying brownfield
16 property by averaging the eligible remedi-
17 ation expenditures for all such properties
18 acquired during the election period. If the
19 eligible taxpayer or qualifying partnership
20 makes such an election, the election shall
21 apply to all qualified sales, exchanges, or
22 other dispositions of qualifying brownfield
23 properties the acquisition and transfer of
24 which occur during the period for which
25 the election remains in effect.

1 “(ii) ELECTION.—An election under
2 clause (i) shall be made with the eligible
3 taxpayer’s or qualifying partnership’s time-
4 ly filed tax return (including extensions)
5 for the first taxable year for which the tax-
6 payer or qualifying partnership intends to
7 have the election apply. An election under
8 clause (i) is effective for the period—

9 “(I) beginning on the date which
10 is the first day of the taxable year of
11 the return in which the election is in-
12 cluded or a later day in such taxable
13 year selected by the eligible taxpayer
14 or qualifying partnership, and

15 “(II) ending on the date which is
16 the earliest of a date of revocation se-
17 lected by the eligible taxpayer or
18 qualifying partnership, the date which
19 is 8 years after the date described in
20 subclause (I), or, in the case of an
21 election by a qualifying partnership of
22 which the eligible taxpayer is a part-
23 ner, the date of the termination of the
24 qualifying partnership.

1 “(iii) REVOCATION.—An eligible tax-
2 payer or qualifying partnership may revoke
3 an election under clause (i)(II) by filing a
4 statement of revocation with a timely filed
5 tax return (including extensions). A rev-
6 ocation is effective as of the first day of
7 the taxable year of the return in which the
8 revocation is included or a later day in
9 such taxable year selected by the eligible
10 taxpayer or qualifying partnership. Once
11 an eligible taxpayer or qualifying partner-
12 ship revokes the election, the eligible tax-
13 payer or qualifying partnership is ineligible
14 to make another election under clause (i)
15 with respect to any qualifying brownfield
16 property subject to the revoked election.

17 “(I) RECAPTURE.—If an eligible taxpayer
18 excludes gain or loss from a sale, exchange, or
19 other disposition of property to which an elec-
20 tion under subparagraph (H) applies, and such
21 property fails to satisfy the requirements of this
22 paragraph, the unrelated business taxable in-
23 come of the eligible taxpayer for the taxable
24 year in which such failure occurs shall be deter-
25 mined by including any previously excluded gain

1 or loss from such sale, exchange, or other dis-
2 position allocable to such taxpayer, and interest
3 shall be determined at the overpayment rate es-
4 tablished under section 6621 on any resulting
5 tax for the period beginning with the due date
6 of the return for the taxable year during which
7 such sale, exchange, or other disposition oc-
8 curred, and ending on the date of payment of
9 the tax.

10 “(J) RELATED PERSONS.—For purposes of
11 this paragraph, a person shall be treated as re-
12 lated to another person if—

13 “(i) such person bears a relationship
14 to such other person described in section
15 267(b) (determined without regard to
16 paragraph (9) thereof), or section
17 707(b)(1), determined by substituting ‘25
18 percent’ for ‘50 percent’ each place it ap-
19 pears therein, and

20 “(ii) in the case such other person is
21 a nonprofit organization, if such person
22 controls directly or indirectly more than 25
23 percent of the governing body of such or-
24 ganization.”.

1 (b) EXCLUSION FROM DEFINITION OF DEBT-FI-
2 NANCED PROPERTY.—Section 514(b)(1) of the Internal
3 Revenue Code of 1986 (defining debt-financed property)
4 is amended by striking “or” at the end of subparagraph
5 (C), by striking the period at the end of subparagraph (D)
6 and inserting “; or”, and by inserting after subparagraph
7 (D) the following new subparagraph:

8 “(E) any property the gain or loss from
9 the sale, exchange, or other disposition of which
10 would be excluded by reason of the provisions
11 of section 512(b)(18) in computing the gross
12 income of any unrelated trade or business.”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to any gain or loss on the sale,
15 exchange, or other disposition of any property acquired by
16 the taxpayer after the date of the enactment of this Act.

○