

108TH CONGRESS  
2D SESSION

# S. 2955

To amend the Internal Revenue Code of 1986 to exclude from gross income of individual taxpayers discharges of indebtedness attributable to certain forgiven residential mortgage obligations.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 8, 2004

Mr. SMITH (for himself and Mr. CONRAD) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to exclude from gross income of individual taxpayers discharges of indebtedness attributable to certain forgiven residential mortgage obligations.

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 “Mortgage Cancellation  
5       Relief Act of 2004”.

1 **SEC. 2. EXCLUSION FROM GROSS INCOME FOR CERTAIN**  
 2 **FORGIVEN MORTGAGE OBLIGATIONS.**

3 (a) IN GENERAL.—Paragraph (1) of section 108(a)  
 4 of the Internal Revenue Code of 1986 (relating to exclu-  
 5 sion from gross income) is amended by striking “or” at  
 6 the end of subparagraph (C), by striking the period at the  
 7 end of subparagraph (D) and inserting “, or”, and by in-  
 8 serting after subparagraph (D) the following new subpara-  
 9 graph:

10 “(E) in the case of an individual, the in-  
 11 debtedness discharged is qualified residential in-  
 12 debtedness.”.

13 (b) QUALIFIED RESIDENTIAL INDEBTEDNESS  
 14 SHORTFALL.—Section 108 of such Code (relating to dis-  
 15 charge of indebtedness) is amended by adding at the end  
 16 the following new subsection:

17 “(h) SPECIAL RULES FOR QUALIFIED RESIDENTIAL  
 18 INDEBTEDNESS.—

19 “(1) LIMITATIONS.—

20 “(A) IN GENERAL.—The amount excluded  
 21 under subparagraph (E) of subsection (a)(1)  
 22 with respect to any qualified residential indebt-  
 23 edness shall not exceed the excess (if any) of—

24 “(i) the outstanding principal amount  
 25 of such indebtedness (immediately before  
 26 the discharge), over

1 “(ii) the sum of—

2 “(I) the amount realized from  
3 the sale of the real property securing  
4 such indebtedness reduced by the cost  
5 of such sale, and

6 “(II) the outstanding principal  
7 amount of any other indebtedness se-  
8 cured by such property.

9 “(B) OVERALL LIMITATION.—The amount  
10 excluded under subparagraph (E) of subsection  
11 (a)(1) with respect to any qualified residential  
12 indebtedness shall not exceed \$50,000.

13 “(2) QUALIFIED RESIDENTIAL INDEBTED-  
14 NESS.—

15 “(A) IN GENERAL.—The term ‘qualified  
16 residential indebtedness’ means indebtedness  
17 which—

18 “(i) was incurred or assumed by the  
19 taxpayer in connection with real property  
20 used by the taxpayer as a principal resi-  
21 dence (within the meaning of section 121)  
22 and is secured by such real property,

23 “(ii) is incurred or assumed to ac-  
24 quire, construct, reconstruct, or substan-  
25 tially improve such real property, and

1 “(iii) with respect to which such tax-  
 2 payer makes an election to have this para-  
 3 graph apply.

4 “(B) REFINANCED INDEBTEDNESS.—Such  
 5 term shall include indebtedness resulting from  
 6 the refinancing of indebtedness under subpara-  
 7 graph (A)(ii), but only to the extent the refi-  
 8 nanced indebtedness does not exceed the  
 9 amount of the indebtedness being refinanced.

10 “(C) EXCEPTIONS.—Such term shall not  
 11 include qualified farm indebtedness or qualified  
 12 real property business indebtedness.

13 “(3) REGULATIONS.—The Secretary may by  
 14 regulation provide for the disallowance of an exclu-  
 15 sion under this section by reason of subparagraph  
 16 (E) of subsection (a)(1) in cases where the failure  
 17 to repay the indebtedness is due to the bad faith of  
 18 the taxpayer.”.

19 (c) CONFORMING AMENDMENTS.—

20 (1) Paragraph (2) of section 108(a) of such  
 21 Code is amended—

22 (A) in subparagraph (A) by striking “and  
 23 (D)” and inserting “(D), and (E)”, and

24 (B) by amending subparagraph (B) to read  
 25 as follows:

1                   “(B)   INSOLVENCY   EXCLUSION   TAKES  
2                   PRECEDENCE OVER QUALIFIED FARM EXCLU-  
3                   SION, QUALIFIED REAL PROPERTY BUSINESS  
4                   EXCLUSION, AND QUALIFIED RESIDENTIAL  
5                   SHORTFALL EXCLUSION.—Subparagraphs (C),  
6                   (D), and (E) of paragraph (1) shall not apply  
7                   to a discharge to the extent the taxpayer is in-  
8                   solvent.”.

9                   (2) Paragraph (1) of section 108(b) of such  
10                  Code is amended by striking “or (C)” and inserting  
11                  “(C), or (E)”.

12                  (3) Subsection (b) of section 121 of such Code  
13                  is amended by adding at the end the following new  
14                  paragraph:

15                  “(4) SPECIAL RULE RELATING TO DISCHARGE  
16                  OF INDEBTEDNESS.—The amount of gain which  
17                  (but for this paragraph) would be excluded from  
18                  gross income under subsection (a) with respect to a  
19                  principal residence shall be reduced by any amount  
20                  excluded from the gross income of the taxpayer  
21                  under section 108(a)(1)(E) with respect to such resi-  
22                  dence.”.

1       (d) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to discharges after the date of the  
3 enactment of this Act.

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