109TH CONGRESS
1ST SESSION

H. R. 3872

To amend the Internal Revenue Code of 1986 to allow loans from individual retirement plans for qualified small business capital assets.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 2005

Mr. FORTENBERRY 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 allow loans from individual retirement plans for qualified small business capital assets.

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. LOANS FROM INDIVIDUAL RETIREMENT PLANS**

4 **FOR QUALIFIED SMALL BUSINESS CAPITAL**

5 **ASSETS.**

6 (a) EXEMPTION FROM PROHIBITED TRANSACTION

7 RULES.—Section 4975 of the Internal Revenue Code of

8 1986 (relating to tax on prohibited transactions) is

9 amended by redesignating subsections (h) and (i) as sub-

1 sections (i) and (j), respectively, and by inserting after

2 subsection (g) the following new subsection:

3 "(h) SPECIAL RULE FOR LOANS FOR QUALIFIED

4 SMALL BUSINESS CAPITAL ASSETS.—

5   "(1) IN GENERAL.—The prohibitions provided

6   in subsection (c) shall not apply to any qualified

7   small business loan from an individual retirement

8   plan to the individual for whose benefit the plan is

9   maintained to the extent that such loan (when added

10   to the outstanding balance of all other such loans)

11   does exceed the lesser of—

12   "(A) $50,000, reduced by the excess (if

13   any) of—

14   "(i) the highest outstanding balance

15   of such loans during the 1-year period end-

16   ing on the day before the date on which

17   such loan was made, over

18   "(ii) the outstanding balance of such

19   loans on the date on which such loan was

20   made, or

21   "(B) the greater of—

22   "(i) one-half of the amount available

23   for distribution under the plan, or

24   "(ii) $10,000.

1 "(2) QUALIFIED SMALL BUSINESS LOAN.—For

2 purposes of this subsection—

3   "(A) IN GENERAL.—The term 'qualified

4   small business loan' means a loan the proceeds

5   of which are used by the individual for whose

6   benefit the individual retirement plan is estab-

7   lished to acquire qualified small business capital

8   assets.

9   "(B) QUALIFIED SMALL BUSINESS CAP-

10   ITAL ASSETS.—The term 'qualified small busi-

11   ness capital assets' means—

12   "(i) stock in a domestic corporation

13   acquired by the taxpayer at its original

14   issue,

15   "(ii) any capital or profits interest in

16   a domestic partnership acquired by the

17   taxpayer from the partnership, and

18   "(iii) tangible property acquired by

19   the taxpayer substantially all of the use of

20   which is in a trade or business of the tax-

21   payer,

22   but only if the taxpayer is an active participant

23   in such trade or business or, in the case of in-

24   terests in a corporation or partnership de-

25   scribed in clauses (i) and (ii), only if the tax-

1 payer is an active participant in a trade or busi-

2 ness of such corporation or partnership.

3 "(3) REQUIREMENT THAT LOAN BE REPAYABLE

4 WITHIN 5 YEARS.—Paragraph (1) shall not apply to

5 any loan unless such loan, by its terms, is required

6 to be repaid within 5 years.

7 "(4) REQUIREMENT OF LEVEL AMORTIZA-

8 TION.—Rules similar to the rules of section

9 72(p)(2)(C) shall apply for purposes of this sub-

10 section.".

11 (b) CONFORMING AMENDMENT.—Subsection (e) of

12 section 408 of such Code (relating to tax treatment of ac-

13 counts and annuities) is amended by adding at the end

14 the following new paragraph:

15 "(6) EXCEPTION FOR LOANS FROM INDIVIDUAL

16 RETIREMENT PLANS FOR QUALIFIED SMALL BUSI-

17 NESS CAPITAL EXPENDITURES.—In the case of a

18 qualified small business loan (as defined in section

19 4975(h)(2)) from an individual retirement plan—

20 "(A) such plan shall not fail to be treated

21 as an individual retirement plan under para-

22 graph (2) or (3) solely because of such loan,

23 and

24 "(B) such loan shall not be treated as a

25 distribution from such plan.".

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

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