

111TH CONGRESS
2D SESSION

H. R. 5943

To amend the Internal Revenue Code of 1986 to allow a deduction for the portion of any equity investment used to buy down debt on commercial real property.

IN THE HOUSE OF REPRESENTATIVES

JULY 29, 2010

Ms. BERKLEY (for herself, Mr. NUNES, and Mr. CROWLEY) 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 allow a deduction for the portion of any equity investment used to buy down debt on commercial real property.

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 “Community Recovery
5 and Enhancement Act of 2010” or the “CRE Act of
6 2010”.

1 **SEC. 2. DEDUCTION FOR EQUITY INVESTMENTS USED TO**
 2 **BUY DOWN DEBT ON COMMERCIAL REAL**
 3 **PROPERTY.**

4 (a) IN GENERAL.—Part VI of subchapter B of chap-
 5 ter 1 of the Internal Revenue Code of 1986 (relating to
 6 additional itemized deductions for individuals and corpora-
 7 tions) is amended by adding at the end the following new
 8 section:

9 **“SEC. 199A. DEDUCTION FOR EQUITY INVESTMENTS USED**
 10 **TO BUY DOWN DEBT ON COMMERCIAL REAL**
 11 **PROPERTY.**

12 “(a) IN GENERAL.—There shall be allowed as a de-
 13 duction an amount equal to—

14 “(1) 50 percent of any qualified debt reduction
 15 equity investment made during the taxable year by
 16 the taxpayer in a partnership, and

17 “(2) 50 percent of any qualified debt reduction
 18 payment made during the taxable year by the tax-
 19 payer with respect to qualified indebtedness on com-
 20 mercial real property held by the taxpayer.

21 Paragraph (2) shall not apply to any qualified debt reduc-
 22 tion payment made by a partnership.

23 “(b) MAXIMUM DEDUCTION.—The deduction allowed
 24 by subsection (a) for any taxable year shall not exceed,
 25 with respect to each commercial real property, the excess
 26 (if any) of—

1 “(1) the amount of the qualified indebtedness
2 secured by such property as of the beginning of such
3 taxable year, over

4 “(2) the lesser of—

5 “(A) 50 percent of the amount described
6 in paragraph (1), or

7 “(B) the adjusted basis of such property
8 (in the hands of the partnership or the tax-
9 payer, as the case may be) as of the close of
10 such taxable year (determined without regard to
11 qualified debt reduction equity investments and
12 qualified debt reduction payments made during
13 the taxable year and depreciation for such
14 year).

15 “(c) QUALIFIED DEBT REDUCTION EQUITY INVEST-
16 MENT; QUALIFIED DEBT REDUCTION PAYMENT.—For
17 purposes of this section—

18 “(1) QUALIFIED DEBT REDUCTION EQUITY IN-
19 VESTMENT.—

20 “(A) IN GENERAL.—The term ‘qualified
21 debt reduction equity investment’ means the
22 amount of any qualified equity investment
23 which is used by the partnership to reduce the
24 principal amount of qualified indebtedness of
25 the partnership.

1 “(B) QUALIFIED EQUITY INVESTMENT.—

2 The term ‘qualified equity investment’ means
3 any equity investment (as defined in section
4 45D(b)(6)) in a partnership if—

5 “(i) such investment is acquired by
6 the taxpayer at its original issue (directly
7 or through an underwriter) solely in ex-
8 change for cash,

9 “(ii) at least 80 percent of such cash
10 is used by the partnership to reduce the
11 principal amount of qualified indebtedness
12 of the partnership,

13 “(iii) the portion of such cash not so
14 used is used by the partnership for im-
15 provements to commercial real property
16 held by the partnership, and

17 “(iv) the person or persons otherwise
18 entitled to depreciation on such property
19 consent to the basis reduction under sub-
20 section (f)(1).

21 “(C) REDEMPTIONS.—A rule similar to the
22 rule of section 1202(c)(3) shall apply for pur-
23 poses of this paragraph.

24 “(2) QUALIFIED DEBT REDUCTION PAYMENT.—

25 In the case of commercial real property held by a

1 taxpayer other than a partnership, the term ‘quali-
2 fied debt reduction payment’ means the amount of
3 cash paid by the taxpayer during the taxable year to
4 reduce the principal amount of qualified indebted-
5 ness of the taxpayer.

6 “(d) OTHER DEFINITIONS.—For purposes of this
7 section—

8 “(1) QUALIFIED INDEBTEDNESS.—

9 “(A) PARTNERSHIPS.—The term ‘qualified
10 indebtedness’ means, with respect to a partner-
11 ship, any indebtedness—

12 “(i) incurred or assumed by the part-
13 nership on or before January 1, 2009, and

14 “(ii) which is secured by commercial
15 real property held by the partnership at
16 the time the qualified debt reduction equity
17 investment is made by the taxpayer.

18 “(B) OTHER TAXPAYERS.—In the case of
19 a taxpayer other than a partnership, the term
20 ‘qualified indebtedness’ has the meaning given
21 to such term by subparagraph (A) determined
22 by substituting—

23 “(i) ‘taxpayer’ for ‘partnership’, and

1 “(ii) ‘qualified debt reduction pay-
2 ment’ for ‘qualified debt reduction equity
3 investment’.

4 “(2) COMMERCIAL REAL PROPERTY.—The term
5 ‘commercial real property’ means section 1250 prop-
6 erty (as defined in section 1250(c)); except that such
7 term shall not include residential rental property (as
8 defined in section 168(e)(2)) unless the building con-
9 tains at least 3 dwelling units.

10 “(e) APPLICATION OF SECTION 1250.—For purposes
11 of determining the depreciation adjustments under section
12 1250 with respect to any property—

13 “(1) the deduction allowed by this section shall
14 be treated as a deduction for depreciation, and

15 “(2) the depreciation adjustments in respect of
16 such property shall include all deductions allowed by
17 this section to all taxpayers by reason of reducing
18 the debt secured by such property.

19 “(f) SPECIAL RULES.—

20 “(1) BASIS REDUCTION.—The basis of any
21 property with respect to which any qualified debt re-
22 duction equity investment or qualified debt reduction
23 payment is made shall be reduced by the amount of
24 the deduction allowed by this section by reason of
25 such investment or payment.

1 “(2) REFINANCINGS.—The indebtedness de-
2 scribed in subsection (d)(1)(A)(i) shall include in-
3 debtedness resulting from the refinancing of indebt-
4 edness described in such subsection (or this sen-
5 tence), but only to the extent it does not exceed the
6 amount of the indebtedness being refinanced.

7 “(3) DEBT REDUCTION MUST BE IN EXCESS OF
8 SCHEDULED PAYMENTS.—Only amounts paid in ex-
9 cess of the amounts required to be paid under the
10 terms of the loan may be taken into account under
11 this section.

12 “(4) DENIAL OF DEDUCTION FOR DEBT-FI-
13 NANCED INVESTMENTS, ETC.—No deduction shall be
14 allowed by this section for any qualified debt reduc-
15 tion equity investment or any qualified debt reduc-
16 tion payment to the extent indebtedness is incurred
17 or continued to make such investment or payment.

18 “(5) RECAPTURE OF DEDUCTION IF ADDI-
19 TIONAL DEBT WITHIN 3 YEARS.—

20 “(A) IN GENERAL.—If a partnership in-
21 curs any additional debt within 3 years after
22 the date that the partnership received a quali-
23 fied debt reduction equity investment, the ordi-
24 nary income of the taxpayer making such in-

vestment shall be increased by the applicable percentage of the recaptured deduction.

“(B) RECAPTURED DEDUCTION.—For purposes of this paragraph, the recaptured deduction is the excess of—

“(i) the deduction allowed by subsection (a) on account of a qualified debt reduction equity investment, over

“(ii) the deduction which would have been so allowed if such investment had been reduced by such investment’s share of the additional debt.

“(C) APPLICABLE PERCENTAGE.—The applicable percentage shall be determined in accordance with the following table:

“If, of the 3 years referred to in subparagraph (A), the additional debt occurs during the:	The applicable percentage is:
1st such year	100
2d such year	66 $\frac{2}{3}$
3d such year	33 $\frac{1}{3}$

“(D) INVESTMENT’S SHARE OF ADDITIONAL DEBT.—A qualified debt reduction equity investment’s share of additional debt is the amount which bears the same ratio to such additional debt as such taxpayer’s qualified debt reduction equity investment bears to the aggregate qualified debt reduction equity investments

1 of all such taxpayers to which subparagraph
2 (A) applies by reason of such additional debt.

3 “(E) SUBSEQUENT DEPRECIATION.—The
4 partnership’s deductions under section 168 for
5 periods after a recaptured deduction under this
6 paragraph shall be determined as if the portion
7 of the qualified debt reduction equity invest-
8 ment allocable to the recaptured deduction had
9 never been made.

10 “(F) SIMILAR RULES FOR QUALIFIED
11 DEBT REDUCTION PAYMENTS.—Rules similar to
12 the rules of the preceding provisions of this
13 paragraph shall apply to qualified debt reduc-
14 tion payments.

15 “(6) EXEMPTION FROM PASSIVE LOSS
16 RULES.—Section 469 shall not apply to the deduc-
17 tion allowed by this section.

18 “(g) APPLICATION OF SECTION.—This section shall
19 apply to qualified debt reduction equity investments and
20 qualified debt reduction payments made after the date of
21 the enactment of this section and before January 1,
22 2013.”.

23 (b) EARNINGS AND PROFITS.—Subsection (k) of sec-
24 tion 312 of such Code is amended by adding at the end
25 the following new paragraph:

1 “(6) TREATMENT OF SECTION 199A.—Para-
2 graphs (1) and (3) shall not apply to the deduction
3 allowed by section 199A.”.

4 (c) CLERICAL AMENDMENT.—The table of sections
5 for part VI of subchapter B of chapter 1 of such Code
6 is amended by adding at the end the following new item:

 “Sec. 199A. Deduction for equity investments used to buy down debt on com-
 mercial real property.”.

7 (d) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to taxable years ending after the
9 date of the enactment of this Act.

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