

111TH CONGRESS
1ST SESSION

S. 78

To amend the Internal Revenue Code of 1986 to provide a full exclusion
for gain from certain small business stocks.

IN THE SENATE OF THE UNITED STATES

JANUARY 6, 2009

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

A BILL

To amend the Internal Revenue Code of 1986 to provide
a full exclusion for gain from certain small business stocks.

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 “Invest in Small Busi-
5 ness Act of 2009”.

6 **SEC. 2. INCREASED EXCLUSION AND OTHER MODIFICA-**
7 **TIONS APPLICABLE TO QUALIFIED SMALL**
8 **BUSINESS STOCK.**

9 (a) INCREASED EXCLUSION.—

1 (1) IN GENERAL.—Subsection (a) of section
 2 1202 of the Internal Revenue Code of 1986 (relating
 3 partial exclusion for gain from certain small business
 4 stock) is amended to read as follows:

5 “(a) EXCLUSION.—Gross income shall not include
 6 100 percent of any gain from the sale or exchange of
 7 qualified small business stock held for more than 4
 8 years.”.

9 (2) RULE RELATING TO STOCK HELD AMONG
 10 MEMBERS OF CONTROLLED GROUP.—Subsection (c)
 11 of section 1202 of such Code is amended by adding
 12 at the end the following new paragraph:

13 “(4) STOCK HELD AMONG MEMBERS OF 25-PER-
 14 CENT CONTROLLED GROUP NOT ELIGIBLE.—

15 “(A) IN GENERAL.—Stock of a member of
 16 a 25-percent controlled group shall not be treat-
 17 ed as qualified small business stock while held
 18 by another member of such group.

19 “(B) 25-PERCENT CONTROLLED GROUP.—
 20 For purposes of subparagraph (A), the term
 21 ‘25-percent controlled group’ means any con-
 22 trolled group of corporations as defined in sec-
 23 tion 1563(a)(1), except that—

1 “(i) ‘more than 25 percent’ shall be
 2 substituted for ‘at least 80 percent’ each
 3 place it appears in section 1563(a)(1), and
 4 “(ii) section 1563(a)(4) shall not
 5 apply.”.

6 (3) CONFORMING AMENDMENTS.—

7 (A) Subsections (b)(2), (g)(2)(A), and
 8 (j)(1)(A) of section 1202 of such Code are each
 9 amended by striking “5 years” and inserting “4
 10 years”.

11 (B) The heading for section 1202 of such
 12 Code is amended by striking “**PARTIAL**”.

13 (C) The item relating to section 1202 in
 14 the table of sections for part I of subchapter P
 15 of chapter 1 of such Code is amended by strik-
 16 ing “Partial exclusion” and inserting “Exclu-
 17 sion”.

18 (D) Section 1223(13) of such Code is
 19 amended by striking “1202(a)(2),”.

20 (b) REPEAL OF MINIMUM TAX PREFERENCE.—

21 (1) IN GENERAL.—Subsection (a) of section 57
 22 of the Internal Revenue Code of 1986 (relating to
 23 items of tax preference) is amended by striking
 24 paragraph (7).

1 (2) TECHNICAL AMENDMENT.—Subclause (II)
 2 of section 53(d)(1)(B)(ii) of such Code is amended
 3 by striking “, (5), and (7)” and inserting “and (5)”.

4 (c) REPEAL OF 28 PERCENT CAPITAL GAINS RATE
 5 ON QUALIFIED SMALL BUSINESS STOCK.—

6 (1) IN GENERAL.—Subparagraph (A) of section
 7 1(h)(4) of the Internal Revenue Code of 1986 is
 8 amended to read as follows:

9 “(A) collectibles gain, over”.

10 (2) CONFORMING AMENDMENTS.—

11 (A) Section 1(h) of such Code is amended
 12 by striking paragraph (7).

13 (B)(i) Section 1(h) of such Code is amend-
 14 ed by redesignating paragraphs (8), (9), (10),
 15 (11), (12), and (13) as paragraphs (7), (8), (9),
 16 (10), (11), and (12), respectively.

17 (ii) Sections 163(d)(4)(B), 854(b)(5),
 18 857(c)(2)(D) of such Code are each amended
 19 by striking “section 1(h)(11)(B)” and inserting
 20 “section 1(h)(10)(B)”.

21 (iii) The following sections of such Code
 22 are each amended by striking “section
 23 1(h)(11)” and inserting “section 1(h)(10)”:

24 (I) Section 301(f)(4).

25 (II) Section 306(a)(1)(D).

1 (III) Section 584(c).

2 (IV) Section 702(a)(5).

3 (V) Section 854(a).

4 (VI) Section 854(b)(2).

5 (iv) The heading of section 857(c)(2) is
6 amended by striking “1(h)(11)” and inserting
7 “1(h)(10)”.

8 (d) INCREASE AGGREGATE ASSET LIMITATION FOR
9 QUALIFIED SMALL BUSINESSES.—

10 (1) IN GENERAL.—Paragraph (1) of section
11 1202(d) of the Internal Revenue Code of 1986 (re-
12 lating to qualified small business) is amended by
13 striking “\$50,000,000” each place it appears and in-
14 serting “\$100,000,000”.

15 (2) INFLATION ADJUSTMENT.—Section 1202(d)
16 of such Code is amended by adding at the end the
17 following new paragraph:

18 “(4) INFLATION ADJUSTMENT.—

19 “(A) IN GENERAL.—In the case of any
20 taxable year beginning in a calendar year after
21 2009, each of the \$100,000,000 dollar amounts
22 in paragraph (1) shall be increased by an
23 amount equal to—

24 “(i) such dollar amount, multiplied by

“(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2008’ for ‘calendar year 1992’ in subparagraph (B) thereof.

“(B) ROUNDING.—If any amount as adjusted under subparagraph (A) is not a multiple of \$1,000, such amount shall be rounded to the next lowest multiple of \$100.”.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section apply to stock issued after December 31, 2009.

(2) SPECIAL RULE FOR STOCK ISSUED BEFORE JANUARY 1, 2010.—The amendments made by subsections (a), (b), and (c) shall apply to sales or exchanges—

(A) made after December 31, 2009,

(B) of stock issued before such date,

(C) by a taxpayer other than a corporation.

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