

109TH CONGRESS
2^D SESSION

S. 3616

To amend the Internal Revenue Code of 1986 to provide an incentive to preserve affordable housing in multifamily housing units which are sold or exchanged.

IN THE SENATE OF THE UNITED STATES

JUNE 29, 2006

Mr. SCHUMER (for himself, Mr. SMITH, Mr. BOND, Mr. REED, Mrs. MURRAY, and Mr. SARBANES) 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 an incentive to preserve affordable housing in multifamily housing units which are sold or exchanged.

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 “Affordable Housing
5 Preservation Act of 2006”.

1 **SEC. 2. EXCLUSION OF GAIN FROM SALES OF AFFORDABLE**
 2 **HOUSING WHICH IS ATTRIBUTABLE TO DE-**
 3 **PRECIATION.**

4 (a) IN GENERAL.—Part I of subchapter P of chapter
 5 1 of the Internal Revenue Code of 1986 (relating to treat-
 6 ment of capital gains) is amended by inserting after sec-
 7 tion 1202 the following new section:

8 **“SEC. 1203. EXCLUSION OF GAIN FROM QUALIFIED SALES**
 9 **OF MULTIFAMILY HOUSING.**

10 “(a) IN GENERAL.—Gross income shall not include
 11 gain from the qualified sale or exchange of eligible multi-
 12 family housing property.

13 “(b) EXCLUSION LIMITED TO DEPRECIATION.—The
 14 amount of gain excluded from gross income under sub-
 15 section (a) with respect to any property shall not exceed
 16 the depreciation adjustments (as defined in section
 17 1250(b)(3)) in respect of such property.

18 “(c) QUALIFIED SALE OR EXCHANGE.—For purposes
 19 of this section—

20 “(1) IN GENERAL.—The term ‘qualified sale or
 21 exchange’ means a sale of eligible multifamily hous-
 22 ing property to or an exchange of such property with
 23 a preservation entity which agrees to maintain af-
 24 fordability and use restrictions regarding the prop-
 25 erty that are—

1 “(A) for a term of not less than the ex-
2 tended use period,

3 “(B) legally enforceable, and

4 “(C) consistent with the requirements of
5 paragraph (2).

6 Such restrictions shall be binding on all successors
7 of the preservation entity and shall be recorded as
8 a restrictive covenant on the property pursuant to
9 State law.

10 “(2) AFFORDABILITY AND USE RESTRIC-
11 TIONS.—

12 “(A) IN GENERAL.—Affordability and use
13 restrictions regarding a property are consistent
14 with this paragraph if—

15 “(i) in the case of property with re-
16 spect to which assistance described in sub-
17 section (d) is still in effect (as determined
18 by the Secretary), such property satisfies
19 the affordability and use restrictions in
20 connection with such assistance, or

21 “(ii) in the case of any other property,
22 such property is maintained as affordable
23 housing.

24 “(B) AFFORDABLE HOUSING.—The term
25 ‘affordable housing’ means housing which would

1 be a qualified low-income housing project (as
2 defined in section 42(g)) if subparagraph (A) of
3 section 42(g)(1) did not apply and subpara-
4 graph (B) of such section were applied by sub-
5 stituting ‘51 percent’ for ‘40 percent’. Eligible
6 multifamily housing property shall not fail to be
7 treated as affordable housing solely because
8 residents of such property (while such property
9 was described in subparagraph (A)(i)) continue
10 to reside in such property.

11 “(3) CERTIFICATION BY PROGRAM ADMINIS-
12 TRATOR.—The term ‘qualified sale or exchange’
13 shall not include any sale or exchange of property
14 unless the housing agency certifies—

15 “(A) that the transferee with respect to
16 such property is a qualified preservation entity,

17 “(B) that affordability and use restrictions
18 will be maintained with respect to such property
19 during the extended use period,

20 “(C) that new capital will be expended that
21 restores the condition of the property and funds
22 adequate reserves, and

23 “(D) the amount of gain which the trans-
24 feror will be allowed to exclude from gross in-
25 come under subsection (a) (determined at the

1 entity level in the case of a partnership or S
2 corporation).

3 “(4) EXTENDED USE PERIOD.—The term ‘ex-
4 tended use period’ means the period beginning on
5 the date of sale and ending on the earlier of—

6 “(A) 30 years after the close of the sale,

7 or

8 “(B) the date that the property is acquired
9 by foreclosure (or instrument in lieu of fore-
10 closure).

11 Subparagraph (B) shall not apply if the Secretary
12 determines that the acquisition described therein is
13 part of an arrangement with the owner a purpose of
14 which is to terminate the extended use period.

15 “(d) ELIGIBLE MULTIFAMILY HOUSING PROP-
16 ERTY.—For purposes of this section, the term ‘eligible
17 multifamily housing property’ means any section 1250
18 property (as defined in section 1250(c))—

19 “(1) which is assisted under section 221(d)(3)
20 or section 236 of the National Housing Act (or fi-
21 nanced or assisted by direct loan or tax abatement
22 under similar provisions of State or local laws) and
23 with respect to which the owner is subject to the re-
24 strictions described in section 1039(b)(1)(B) (as in

1 effect on the day before the date of the enactment
2 of the Revenue Reconciliation Act of 1990),

3 “(2) which is described in section 512(2)(B) of
4 the Multifamily Assisted Housing Reform and Af-
5 fordability Act of 1997 (42 U.S.C. 1437f note), or

6 “(3) with respect to which a loan is made or in-
7 sured under title V of the Housing Act of 1949.

8 Such term does not include any property with respect to
9 which a credit under section 42 was allowed to the tax-
10 payer.

11 “(e) PRESERVATION ENTITY.—For purposes of this
12 section, the term ‘preservation entity’ means a housing
13 agency or an organization approved by a housing agency
14 that has the capacity and commitment to successfully ac-
15 quire and preserve eligible multifamily housing property.
16 An organization shall not be treated as a preservation en-
17 tity with respect to any taxpayer if such organization is
18 related (as defined in section 267) to such taxpayer.

19 “(f) RESPONSIBILITIES OF HOUSING AGENCY.—The
20 housing agency (or an agent or other private contractor
21 of such agency) shall—

22 “(1) determine whether the preservation enti-
23 ty’s plan for rehabilitation and operation restores
24 the condition of the eligible multifamily housing
25 property and is viable for no less than 30 years,

1 “(2) monitor the affordability and use restric-
2 tions for the eligible multifamily housing property,
3 and

4 “(3) notify the Internal Revenue Service as to
5 any portion of such property which is out of compli-
6 ance.

7 “(g) RECAPTURE FOR NONCOMPLIANCE.—If the Sec-
8 retary determines that all or a portion of the multifamily
9 housing property acquired by a preservation entity in a
10 transfer to which subsection (a) applied is out of compli-
11 ance with the requirements of this section, the preserva-
12 tion entity’s tax imposed under this chapter for the taxable
13 year shall be increased by (or if such entity is not other-
14 wise subject to tax under this chapter, there shall be im-
15 posed on such entity a tax equal to) 12.5 percent of the
16 amount which bears the same ratio to the amount certified
17 under subsection (c)(3)(C) with respect to such property
18 as such entity’s share of the portion of such property
19 which is out of compliance bears to the entire property.
20 The amount otherwise determined under this subsection
21 (without regard to this sentence) shall be reduced by the
22 product of 3.33 percent of such amount, multiplied by the
23 number of years after the qualified sale or exchange that
24 the property was in compliance with the requirements of
25 this section.

1 “(h) COORDINATION WITH SECTION 1250.—In the
2 case of a qualified sale or exchange of eligible multifamily
3 housing property a portion of the gain from which is treat-
4 ed as ordinary income under section 1250, such portion
5 of the gain shall be excluded from gross income under sub-
6 section (a) before any remaining portion of such gain.

7 “(i) HOUSING AGENCY.—For purposes of this sec-
8 tion, the term ‘housing agency’ means, with respect to any
9 eligible multifamily housing property, the State housing
10 agency (or in the absence of a State housing agency, any
11 Federal housing agency) which administers housing assist-
12 ance with respect to such property.”.

13 (b) CONFORMING AMENDMENTS.—

14 (1) Subparagraph (B) of section 172(d)(2) of
15 the Internal Revenue Code of 1986 is amended by
16 striking “section 1202” and inserting “section 1202
17 and 1203”.

18 (2) Paragraph (4) of section 642(c) of such
19 Code is amended by striking the first sentence and
20 inserting the following: “To the extent that the
21 amount otherwise allowable as a deduction under
22 this subsection consists of gain described in section
23 1202(a) or 1203(a)), proper adjustment shall be
24 made for any exclusion allowable to the estate or

1 trust under section 1202 or section 1203, as the
2 case may be.”.

3 (3) Paragraph (3) of section 643(a) of such
4 Code is amended by striking “section 1202” and in-
5 serting “sections 1202 and 1203”.

6 (4) Paragraph (4) of section 691(c) of such
7 Code is amended by inserting “1203,” after
8 “1202,”.

9 (5) Paragraph (2) of section 871(a) of such
10 Code is amended by inserting “and 1203” after
11 “section 1202”.

12 (6) The table of sections for part I of sub-
13 chapter P of chapter 1 of such Code is amended by
14 inserting after the item relating to section 1202 the
15 following new item:

“Sec. 1203. Exclusion of gain from qualified sales of multifamily housing.”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to taxable years beginning after
18 December 31, 2005.

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