II

116TH CONGRESS
1ST SESSION

S. 2571

To amend the Internal Revenue Code of 1986 to allow a business credit for gain from the sale of real property for use as a manufactured home community, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 26, 2019

Mrs. SHAHEEN (for herself and Ms. SMITH) 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 allow a business credit for gain from the sale of real property for use as a manufactured home community, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Manufactured Housing Community Sustainability Act of 2019".

SEC. 2. FINDINGS.

The Congress finds that—

(1) more than 17,000,000 people live in manufactured homes and benefit from high-quality affordable homes which provide stability;

(2) owners of manufactured homes have disproportionately low-income households, and in 2013, the median annual household income for living in manufactured housing was $28,400;

(3) approximately 75 percent of manufactured home households earn less than $50,000 per year;

(4) more than 10 percent of veterans in the United States live in manufactured homes;

(5) in late 1990, manufactured housing represented ⅔ of the new affordable housing produced in the United States and remains a significant source of unsubsidized affordable housing in the United States;

(6) in 2015, the average cost per square foot for a new manufactured home was 48 dollars, less than half of the cost per square foot for a new-site built, structure-only home, which was $101;

(7) in 2009, 43 percent of all new homes that sold for less than $150,000 were manufactured homes;

(8) manufactured homes account for 23 percent of new home sales under $200,000;

(9) more than 50,000 manufactured home communities, also referred to as "mobile home parks", exist throughout the United States;

(10) more than 2,900,000 manufactured homes are placed in manufactured home communities;

(11) manufactured home communities provide critical affordable housing, but receive very little Federal, State, or local funds to subsidize the cost of manufactured homes;

(12) manufactured home owners in such communities may own the home, but they do not own the land under the home, which leaves the home owners vulnerable to rent increases, arbitrary rule enforcement, and in the case of a manufactured home community owner converting the land to some other use, community closure;

(13) an eviction or closure of a manufactured home community is very disruptive to a resident who may be unable to pay the thousands of dollars it takes to move the manufactured home or find a new location for the manufactured home;

(14) in an effort to preserve a crucial source of affordable housing within the past two decades, a national network of housing providers has helped residents purchase and own the land under the man-

ufactured home community, and manage the manufactured home community;

(15) nationwide, there are more than 1,000 stable, permanent ownership cooperatives or nonprofit-owned developments in more than a dozen States;

(16) members of manufactured home communities continue to own such homes individually, own an equal share of the land beneath the entire manufactured home community, participate in the governing of the community, and elect a board of directors who make major decisions within the manufactured home community by a democratic vote;

(17) in New Hampshire, more than 30 percent of manufactured home communities are owned by residents;

(18) resident-owned cooperatives and nonprofit owned communities have also flourished in Vermont, Massachusetts, Rhode Island, Washington, Oregon, and Minnesota;

(19) nationwide, only 2 percent of all manufactured home communities are resident or nonprofit-owned;

(20) manufactured home community owners often prefer to devise such property tax free, rather

than selling the community, in order to avoid capital gain taxes;

(21) when the owner of a manufactured home community dies, the heirs of the owner frequently sell the community to the highest bidder which results in displacement for dozens and sometimes hundreds of families; and

(22) in order to preserve manufactured home communities in the future, a Federal tax benefit should be established to induce manufactured home community owners to sell such properties to residents that the owners have known for decades, or to nonprofit organizations.

SEC. 3. TAX CREDIT FOR MANUFACTURED HOME COMMUNITY SALE TO RESIDENTS OR NONPROFIT ENTITY.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end the following new section:

"SEC. 45T. MANUFACTURED HOME COMMUNITY SALE TO RESIDENTS OR NONPROFIT ENTITY.

"(a) ALLOWANCE OF CREDIT.—For purposes of section 38, the manufactured home community sale credit determined under this section for any taxable year is an amount equal to 75 percent of the qualified gain received by the taxpayer during the taxable year.

"(b) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED GAIN.—The term 'qualified gain' means gain from the sale or exchange of real property to a qualified manufactured home community cooperative or corporation if—

"(A) the real property is acquired for use as a manufactured home community,

"(B) the seller (or any related person) owned the property for the entire 2-year period ending on the day before the sale or exchange, and

"(C) the property is transferred subject to a binding covenant that the property will be used as a manufactured home community for not less than 50 years (or, in the case of a manufactured home community located in a State the laws of which restrict such covenant to a lesser term, the maximum permissible term allowed under such State laws).

"(2) MANUFACTURED HOME COMMUNITY.—The term 'manufactured home community' means a community comprised primarily of manufactured homes used solely for residential purposes and owned by a manufactured home community cooperative or corporation.

"(3) QUALIFIED MANUFACTURED HOME COMMUNITY COOPERATIVE OR CORPORATION.—

"(A) IN GENERAL.—The term 'qualified manufactured home community cooperative or corporation' means a cooperative or a nonprofit corporation established pursuant to the laws of the State in which the property used as a manufactured home community is located, and which—

"(i) in the case of a community owned by a nonprofit corporation whose membership interests are sold on a nonappreciating basis, has only 1 class of membership and such class consists solely of residents, and

"(ii) in the case of a community owned by a cooperative, has not more than 2 classes of membership, and such classes consist solely of residents and a tax-exempt organization.

"(B) GOVERNANCE.—An entity shall not be treated as a qualified manufactured home community cooperative or corporation unless governance of the entity is carried out by members elected to a board of directors with voting structured equitably among all members.

"(C) MEMBER.—The term 'member' means—

"(i) an individual who—

"(I) has attained the age of 18,

"(II) is entitled to be a member by reason of—

"(aa) the membership interest of the individual to execute an occupancy agreement with the manufactured home community cooperative nonprofit with respect to a site in the manufactured home community in order to establish a manufactured home which is owned by the individual, or

"(bb) permission from the manufactured community cooperative or corporation, the member's trust, or other entity, and

"(III) is a resident of the manufactured home community, and "(ii) a tax exempt organization.

"(4) MEMBERSHIP INTEREST.—The term 'membership interest' means—

"(A) an ownership interest in a manufactured home community cooperative or corporation, or

"(B) a membership interest in a manufactured home community nonprofit corporation.

"(5) MANUFACTURED HOME.—The term 'manufactured home' means a structure which is transportable in one or more sections, which—

"(A) in traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or, when erected on site, is 320 square feet or more,

"(B) is built on a permanent chassis and designed to be used as a dwelling (with or without a permanent foundation when connected to required utilities) and includes plumbing, heating, and electrical heating systems, and

"(C) in the case of a structure manufactured after June 15, 1976, is certified as meeting the Manufactured Home Construction and Safety Standards issued under the National Manufactured Housing Construction and Safety

Standards Act of 1974 (42 U.S.C. 5401 et seq.) by the Department of Housing and Urban Development and displays a label of such certification on the exterior of each transportable section.

"(c) SPECIAL RULES.—

"(1) RELATED PERSON.—For purposes of subsection (b)(1)(B), a person is related to the seller if—

"(A) such person bears a relationship to the seller as specified in section 267(b) or 707(b)(1), or

"(B) such person and the seller are engaged in trades or businesses under common control within the meanings of subsections (a) and (b) of section 52.

"(2) ELECTION BY BOTH SELLER AND BUYER.—The credit is allowable under this section only if—

"(A) both the seller and the purchaser of the real property execute an affidavit representing that the sale meets the requirements of subsection (b)(1), and the purchaser acknowledges liability for the recapture of the credit under subsection (d) in case of any violation described in such subsection,

"(B) the purchaser of the real property records the affidavit, and

"(C) the affidavit is referenced in the deed to the real property.

"(3) REQUIREMENT.—The seller shall include a copy of the affidavit representing the sale with the return of tax.

"(d) TAX UPON VIOLATION OF COVENANT.—There is imposed a tax on the buyer for a violation of the covenant specified in subsection (b)(1)(C). The amount of such tax shall be 20 percent of the net proceeds after settlement for the sale or exchange of the real property referred to in subsection (b)(1). For purposes of section 501(a), the tax imposed by this subsection shall not be treated as a tax imposed by this subtitle.

"(e) REGULATIONS.—The Secretary shall issue such regulations or other guidance as may be necessary to carry out this section, including the recapture under subsection (d).".

(b) CREDIT ALLOWED AS PART OF GENERAL BUSINESS CREDIT.—

Section 38(b) of the Internal Revenue Code of 1986 is amended—

(1) by striking “plus” at the end of paragraph (31);

(2) by striking the period at the end of paragraph (32) and inserting “, plus”; and

(3) by adding at the end the following new paragraph:

“(33) the manufactured home community sale credit determined under section 45T(a).”.

(c) CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 196 of the Internal Revenue Code of 1986 is amended—

(A) by striking “and” at the end of paragraph (13);

(B) by striking the period at the end of paragraph (14) and inserting “, and”; and

(C) by adding at the end the following new paragraph:

“(15) the manufactured home community sale credit determined under section 45T(a).”.

(2) The table of sections for subpart D of part IV of subchapter A of chapter 1 of such the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

“Sec. 45T. Manufactured home community sale to residents or nonprofit entity.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2019.

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