

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5201

To amend the Internal Revenue Code of 1986 to provide for nonrecognition of gain on the sale of eligible small business stock if the proceeds of the sale are reinvested in other eligible small business stock.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 6, 1994

Mr. WYDEN 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 provide for nonrecognition of gain on the sale of eligible small business stock if the proceeds of the sale are reinvested in other eligible small business stock.

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 “Entrepreneurship Pro-  
5       motion Act of 1994”.

1 **SEC. 2. ROLLOVER OF GAIN FROM SALE OF ELIGIBLE**  
2 **SMALL BUSINESS STOCK INTO OTHER ELIGI-**  
3 **BLE SMALL BUSINESS STOCK.**

4 (a) IN GENERAL.—Part III of subchapter O of chap-  
5 ter 1 of the Internal Revenue Code of 1986 (relating to  
6 common nontaxable exchanges) is amended by adding at  
7 the end the following new section:

8 **“SEC. 1045. ROLLOVER OF GAIN FROM SALE OF ELIGIBLE**  
9 **SMALL BUSINESS STOCK INTO OTHER ELIGI-**  
10 **BLE SMALL BUSINESS STOCK.**

11 “(a) NONRECOGNITION OF GAIN.—In the case of the  
12 sale of any eligible small business stock with respect to  
13 which the taxpayer elects the application of this section,  
14 gain from such sale shall be recognized only to the extent  
15 that the amount realized on such sale exceeds—

16 “(1) the cost of any other eligible small busi-  
17 ness stock purchased (as defined by section  
18 1043(b)(4)) by the taxpayer during the 18-month  
19 period beginning on the date of such sale, reduced  
20 by

21 “(2) any portion of such cost previously taken  
22 into account under this section.

23 This section shall not apply to any gain which is treated  
24 as ordinary income for purposes of this subtitle.

25 “(b) ELIGIBLE SMALL BUSINESS STOCK.—For pur-  
26 poses of this section—

1           “(1) IN GENERAL.—Except as otherwise pro-  
2           vided in this section, the term ‘eligible small busi-  
3           ness stock’ means any stock in a C corporation if—

4                   “(A) as of the date of issuance, such cor-  
5                   poration is an eligible small business, and

6                   “(B) such stock is acquired by the tax-  
7                   payer at its original issue (directly or through  
8                   an underwriter) in exchange for money or other  
9                   property (not including stock).

10           “(2) ACTIVE BUSINESS REQUIREMENT.—Sub-  
11           section (a) shall not apply to the sale of any eligible  
12           small business stock unless, during substantially all  
13           of the taxpayer’s holding period for such stock, the  
14           corporation meets the active business requirements  
15           of subsection (d) and such corporation is a C cor-  
16           poration. For purposes of the preceding sentence, a  
17           rule similar to the rule of section 1202(c)(2)(B)  
18           shall apply.

19           “(3) SPECIAL RULE FOR STOCK ISSUED BY S  
20           CORPORATIONS.—In the case of stock which, as of  
21           the date of the sale to which subsection (a) applies,  
22           is stock of an eligible small business but which, as  
23           of the date of issuance, was not stock of an eligible  
24           small business solely by reason of the fact that the  
25           corporation was an S corporation—

1           “(A) such stock shall be treated as meeting  
2           the requirement of paragraph (1)(A), but

3           “(B) subsection (a) shall not apply to so  
4           much of the gain which is attributable to the  
5           period before such stock became stock of an eli-  
6           gible small business.

7           “(4) CERTAIN PURCHASES BY CORPORATION OF  
8           ITS OWN STOCK.—Rules similar to the rules of sec-  
9           tion 1202(c)(3) shall apply for purposes of this sub-  
10          section.

11          “(c) ELIGIBLE SMALL BUSINESS.—For purposes of  
12          this section, the term ‘eligible small business’ means any  
13          domestic corporation which is a C corporation if the aggre-  
14          gate annual gross receipts of such corporation (or any  
15          predecessor thereof) for all taxable years ending before the  
16          date of issuance did not exceed \$20,000,000. For purposes  
17          of the preceding sentence, rules similar to the rules of  
18          paragraphs (2) and (3) of section 448(c) shall apply.

19          “(d) ACTIVE BUSINESS REQUIREMENT.—For pur-  
20          poses of subsection (b)(2), the requirements of this sub-  
21          section are met by a corporation for any period if during  
22          such period—

23                 “(1) at least 80 percent (by value) of the assets  
24                 of such corporation are used by such corporation in

1 the active conduct of 1 or more trades or businesses,  
2 and

3 “(2) such corporation is an eligible corporation  
4 (as defined in section 1202(e)(4)).

5 For purposes of the preceding sentence, a rules similar  
6 to the rules of paragraphs (2), (5), (6), (7) and (8) of  
7 section 1202(e) shall apply.

8 “(e) BASIS ADJUSTMENTS.—If gain from any sale is  
9 not recognized by reason of subsection (a), such gain shall  
10 be applied to reduce (in the order acquired) the basis for  
11 determining gain or loss of any eligible small business  
12 stock purchased by the taxpayer during the 18-month pe-  
13 riod described in subsection (a). This subsection shall not  
14 apply for purposes of section 1202.

15 “(f) STATUTE OF LIMITATIONS.—If any gain is real-  
16 ized by the taxpayer on any sale to which an election under  
17 this section applies, then—

18 “(1) the statutory period for the assessment of  
19 any deficiency with respect to such gain shall not ex-  
20 pire before the expiration of 3 years from the date  
21 the Secretary is notified by the taxpayer (in such  
22 manner as the Secretary may by regulations pre-  
23 scribe) of—

24 “(A) the taxpayer’s cost of purchasing any  
25 eligible small business stock,

1           “(B) the taxpayer’s intention not to pur-  
2           chase such stock within the reinvestment pe-  
3           riod, or

4           “(C) a failure to make such purchase with-  
5           in the reinvestment period, and

6           “(2) such deficiency may be assessed before the  
7           expiration of such 3-year period notwithstanding the  
8           provisions of any law or rule of law which would oth-  
9           erwise prevent such assessment.”

10          (b) CONFORMING AMENDMENT.—Paragraph (24) of  
11 section 1016(a) of such Code is amended—

12           (1) by striking “or 1044” and inserting “,  
13           1044, or 1045”, and

14           (2) by striking “or 1044(d)” and inserting “,  
15           1044(d), or 1045(e)”.

16          (c) CLERICAL AMENDMENT.—The table of sections  
17 for part III of subchapter O of chapter 1 of such Code  
18 is amended by adding at the end the following new item:

                  “Sec. 1045. Rollover of gain from sale of eligible small business  
  stock into other eligible small business stock.”

19          (d) EFFECTIVE DATE.—The amendments made by  
20 this section shall apply to sales on and after the date of  
21 the enactment of this Act, in taxable years ending on and  
22 after such date.

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