

104TH CONGRESS
1ST SESSION

H. R. 2761

To amend the Internal Revenue Code of 1986 to provide an election for an overpayment in lieu of a basis increase where indebtedness secured by property has original issue discount and is held by a cash method taxpayer.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 12, 1995

Mr. GREENWOOD (for himself and Mr. McHALE) 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 provide an election for an overpayment in lieu of a basis increase where indebtedness secured by property has original issue discount and is held by a cash method taxpayer.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. ELECTION OF OVERPAYMENT IN LIEU OF BASIS**
2 **INCREASE WHERE INDEBTEDNESS SECURED**
3 **BY PROPERTY HAS ORIGINAL ISSUE DIS-**
4 **COUNT AND IS HELD BY CASH METHOD TAX-**
5 **PAYER.**

6 (a) IN GENERAL.—Section 1038 of the Internal Rev-
7 enue Code of 1986 is amended by adding at the end the
8 following new subsection:

9 “(h) ELECTION OF OVERPAYMENT IN LIEU OF BASIS
10 INCREASE WHERE INDEBTEDNESS SECURED BY PROP-
11 erty HAS ORIGINAL ISSUE DISCOUNT AND IS HELD BY
12 CASH METHOD TAXPAYER.—

13 “(1) IN GENERAL.—In the case of a reacquisi-
14 tion of real property to which subsection (a) applies,
15 if—

16 “(A) with respect to the indebtedness re-
17 ferred to in subsection (a)(1), amounts were in-
18 cludible in the gross income of the seller under
19 section 1272 for periods prior to such reacquisi-
20 tion, and

21 “(B) the seller used the cash receipts and
22 disbursements method of accounting for all
23 such periods,

24 at the election of such seller, the excess inclusion tax
25 amount with respect to such indebtedness shall be
26 treated for purposes of this title as an overpayment

1 of tax for the taxable year in which such reacquisi-
2 tion occurs.

3 “(2) EXCESS INCLUSION TAX AMOUNT.—For
4 purposes of paragraph (1), the term ‘excess inclu-
5 sion tax amount’ means, with respect to any indebt-
6 edness, the sum of the tax adjustments for each of
7 the taxable years in which amounts described in
8 paragraph (1)(A) were includible in gross income.

9 “(3) TAX ADJUSTMENTS.—For purposes of
10 paragraph (2), the term ‘tax adjustment’ means,
11 with respect to any taxable year, the sum of—

12 “(A) the amount by which the net chapter
13 1 tax liability of the taxpayer would be de-
14 creased or increased for such taxable year if
15 such liability were determined without regard to
16 section 1272 with respect to the indebtedness
17 referred to in subsection (a)(1) for such taxable
18 year and all prior taxable years, plus

19 “(B) interest on such decrease or increase
20 as determined under paragraph (4).

21 If, as of the due date (as defined in paragraph
22 (4)(B)) for the taxable year in which such reacquisi-
23 tion occurs, a refund or credit with respect to any
24 preceding taxable year is prevented by the operation
25 of any law or rule of law (including res judicata),

1 subparagraph (B) shall not apply to such preceding
2 taxable year.

3 “(4) COMPUTATION OF INTEREST.—

4 “(A) IN GENERAL.—The amount of inter-
5 est referred to in paragraph (3)(B) with respect
6 to any taxable year shall be determined for the
7 period—

8 “(i) beginning on the due date for
9 such taxable year, and

10 “(ii) ending on the due date for the
11 taxable year in which the reacquisition re-
12 ferred to in paragraph (1) occurs,

13 by using the rates and methods applicable
14 under section 6621 for underpayments or over-
15 payments of tax (as appropriate) for such pe-
16 riod.

17 “(B) DUE DATE.—For purposes of this
18 paragraph, the term ‘due date’ means the date
19 prescribed by law (determined without regard to
20 extensions) for filing the return of the tax im-
21 posed by this chapter for the taxable year.

22 “(5) COORDINATION WITH AMOUNT OF GAIN
23 RESULTING AND BASIS ADJUSTMENT.—In the case
24 of a reacquisition with respect to which the election
25 under this subsection applies—

1 “(A) the amount of gain (if any) deter-
2 mined under subsection (b) resulting from such
3 reacquisition shall not be less than the amount
4 of such gain which would be determined under
5 subsection (b), and

6 “(B) the amount of increase (if any) under
7 subsection (c) shall not exceed the amount of
8 the increase which would be determined under
9 subsection (c),

10 if section 1272 had not applied with respect to the
11 indebtedness referred to in subsection (a)(1).”

12 (b) EFFECTIVE DATE.—The amendment made by
13 this section shall apply to reacquisitions occurring after
14 December 31, 1995.

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