

103^D CONGRESS
1ST SESSION

H. R. 1680

To amend the Internal Revenue Code of 1986 to provide incentives for investments in small business enterprises owned by disadvantaged individuals.

IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 1993

Mr. MFUME (for himself, Mr. SHAYS, and Mr. DIXON) 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 incentives for investments in small business enterprises owned by disadvantaged individuals.

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 “Minority Equity Cap-
5 ital Formation Act of 1993”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—The Congress finds that—

8 (1) there is a severe shortage of capital avail-
9 able and targeted for investment in the United

1 States minority business marketplace and that such
2 shortage constitutes a “capital gap”;

3 (2) the capital gap is a significant barrier to in-
4 creased minority entrepreneurship, employment, and
5 economic development;

6 (3) the development of targeted venture capital
7 resources is an important and needed stimulus for
8 economic development, employment growth, and
9 wealth creation;

10 (4) existing Federal incentives are inadequate
11 to address the capital gap;

12 (5) the existing system of federally regulated
13 specialized small business investment companies
14 (and similar public and private entities who support
15 and invest in the minority small business market-
16 place) should be fully utilized to aggregate and effi-
17 ciently deploy new capital investments; and

18 (6) it is essential, and should be a high priority
19 of the United States Government, to pursue a broad
20 array of Federal tax and other domestic policies that
21 will serve as a catalyst for the creation of capital
22 pools for investment in the minority enterprise mar-
23 ketplace.

24 (b) PURPOSES.—The purposes of this Act are to—

1 (1) authorize a Federal tax credit for invest-
2 ment in qualified minority fund interests;

3 (2) increase the availability of venture capital
4 for minority small business;

5 (3) strengthen existing public and private mi-
6 nority venture capital financial institutions (as well
7 as to encourage the formation of such new institu-
8 tions); and

9 (4) through these actions, support minority en-
10 terprise and economic development, increase minor-
11 ity entrepreneurship and employment, and to en-
12 hance the opportunities for minority persons to par-
13 ticipate fully in the free enterprise system.

14 **SEC. 3. INCENTIVES FOR INVESTMENTS IN MINORITY VEN-**
15 **TURE CAPITAL FUNDS.**

16 (a) GENERAL RULE.—Part IV of subchapter A of
17 chapter 1 of the Internal Revenue Code of 1986 (relating
18 to credits against tax) is amended by adding at the end
19 thereof the following new subpart:

20 **“Subpart H—Incentives for Investments in Minority**
21 **Venture Capital Funds**

“Sec. 54. Credit for investment in minority venture capital funds.
“Sec. 54A. Recapture provisions.
“Sec. 54B. Definitions and special rules.

1 **“SEC. 54. CREDIT FOR INVESTMENT IN MINORITY VENTURE**
2 **CAPITAL FUNDS.**

3 “(a) GENERAL RULE.—For purposes of section 38,
4 the minority venture capital fund credit determined under
5 this section is an amount equal to 20 percent of the aggre-
6 gate bases of qualified minority fund interests which are
7 acquired by the taxpayer during the taxable year at their
8 original issuance (directly or through an underwriter) and
9 which are held by the taxpayer at the end of the taxable
10 year.

11 “(b) LIMITATIONS.—The credit determined under
12 paragraph (1) for any taxable year shall not exceed the
13 lesser of—

14 “(1) \$250,000 (\$125,000 in the case of a sepa-
15 rate return by a married individual), or

16 “(2) \$7,000,000, (\$3,500,000 in the case of a
17 separate return by a married individual), reduced by
18 the amount of the credit allowed under paragraph
19 (1) for all preceding taxable years.

20 **“SEC. 54A. RECAPTURE PROVISIONS.**

21 “(a) BASIS REDUCTION.—

22 “(1) IN GENERAL.—If a credit is determined
23 under section 54(a) with respect to any qualified mi-
24 nority fund interest, the basis of such qualified mi-
25 nority fund interest shall be reduced by the credit so
26 determined.

1 “(2) CERTAIN DISPOSITIONS.—If during any
2 taxable year there is a recapture under subsection
3 (c) with respect to any qualified minority fund inter-
4 est, the basis of such interest (immediately before
5 the event resulting in such recapture) shall be in-
6 creased by an amount equal to the recapture
7 amount. For purposes of the preceding sentence, the
8 term ‘recapture amount’ means any increase in tax
9 under subsection (c) (or adjustment in carrybacks or
10 carryovers under subsection (c)) to the extent attrib-
11 utable to the amount referred to in subsection
12 (c)(1)(A).

13 “(b) TAX CREDIT RECAPTURED AS ORDINARY IN-
14 COME.—

15 “(1) IN GENERAL.—For purposes of section
16 1245—

17 “(A) any property the basis of which is re-
18 duced under subsection (a) (and any other
19 property the basis of which is determined in
20 whole or in part by reference to the adjusted
21 basis of such property) shall be treated as sec-
22 tion 1245 property, and

23 “(B) any reduction under subsection (a)
24 shall be treated as a deduction allowed for
25 depreciation.

1 If an exchange of any stock or partnership interest
2 the basis of which is reduced under subsection (a)
3 qualifies under section 351(a), 354(a), 355(a), or
4 356(a), the amount of gain recognized under section
5 1245 by reason of this paragraph shall not exceed
6 the amount of gain recognized in the exchange (de-
7 termined without regard to this paragraph).

8 “(2) CERTAIN EVENTS TREATED AS DISPOSI-
9 TIONS.—For purposes of this subsection and sub-
10 section (c), if a credit was determined under section
11 54 with respect to any stock in a corporation or in-
12 terest in a partnership and such stock or partner-
13 ship interest, as the case may be, ceases to be a
14 qualified minority fund interest, the taxpayer shall
15 be treated as having disposed of such property (as
16 of the time of such cessation) for an amount equal
17 to its fair market value.

18 “(c) INCREASE IN TAX IF DISPOSITION WITHIN 5
19 YEARS.—

20 “(1) IN GENERAL.—If a taxpayer disposes of
21 any qualified minority fund interest before the close
22 of the fifth taxable year after the taxable year in
23 which such interest was acquired by the taxpayer,
24 the tax imposed by this chapter for the taxable year

1 in which such disposition occurs shall be increased
2 by the sum of—

3 “(A) the recapture percentage of the ag-
4 gregate decrease in the credits allowed under
5 section 38 for all prior taxable years which
6 would have resulted solely from reducing to zero
7 any credit determined under this subpart with
8 respect to such interest, and

9 “(B) the interest amount determined
10 under paragraph (3).

11 “(2) RECAPTURE PERCENTAGE.—For purposes
12 of paragraph (1), the recapture percentage is—

13 “(A) 100 percent if the disposition occurs
14 during the first, second, or third taxable year
15 after the taxable year in which the qualified mi-
16 nority fund interest was acquired, and

17 “(B) 50 percent if the disposition occurs in
18 the fourth or fifth taxable year after the taxable
19 year in which such interest was acquired.

20 “(3) INTEREST AMOUNT.—For purposes of
21 paragraph (1), the interest amount determined
22 under this paragraph is interest determined at the
23 overpayment rate established under section
24 662(a)(2) (without regard to section 6621(c))—

1 “(A) on the recapture percentage of each
2 decrease in credit referred to in paragraph
3 (1)(A) for any prior taxable year,

4 “(B) for the period beginning on the due
5 date for such prior taxable year and ending on
6 the due date for the taxable year in which the
7 disposition occurs.

8 For purposes of the preceding sentence, the term
9 ‘due date’ means the due date (determined without
10 regard to extensions) for filing the return of the tax
11 imposed by this chapter.

12 “(4) CARRYBACKS AND CARRYOVERS AD-
13 JUSTED.—In the case of any disposition described in
14 paragraph (1), the carrybacks and carryovers under
15 section 39 shall be adjusted by reason of such
16 disposition.

17 “(5) COORDINATION WITH OTHER CREDITS,
18 ETC.—Any increase in tax under paragraph (1) shall
19 not be treated as a tax imposed by this chapter for
20 purposes of determining the amount of—

21 “(A) any credit allowable under subpart A,
22 B, D, or G, and

23 “(B) the minimum tax imposed by section
24 55.

1 “(6) SPECIAL RULES.—For purposes of this
2 subsection—

3 “(A) MERE CHANGE IN FORM.—A tax-
4 payer shall not be treated as disposing of any
5 qualified minority fund interest by reason of a
6 mere change in the form of the taxpayer, the
7 entity which issued such interest or any quali-
8 fied minority business.

9 “(B) EXCEPTION FOR CERTAIN TRANS-
10 FERS.—Paragraph (1) shall not apply to any
11 transfer by reason of death or in a transaction
12 to which section 381(a) applies.

13 **“SEC. 54B. DEFINITIONS AND SPECIAL RULES.**

14 “(a) QUALIFIED MINORITY BUSINESS DEFINED.—
15 For purposes of this subpart—

16 “(1) GENERAL RULE.—The term ‘qualified mi-
17 nority business’ means any domestic business if—

18 “(A) 50 percent or more of the total value
19 of the ownership interests in such business are
20 held (directly or indirectly) by individuals who
21 are members of a minority,

22 “(B) throughout the 5-year period ending
23 on the date as of which the determination is
24 being made (or, if shorter, throughout the pe-
25 riod such business was in existence), such busi-

1 ness has been engaged in the active conduct of
2 a trade or business or in startup activities relat-
3 ing to a trade or business, and

4 “(C) substantially all of the assets of such
5 business are being used in the active conduct of
6 a trade or business or in startup activities relat-
7 ed to a trade or business.

8 “(2) DOMESTIC BUSINESS.—For purposes of
9 paragraph (1), the term ‘domestic business’
10 means—

11 “(A) any domestic corporation or domestic
12 partnership, and

13 “(B) any trade or business conducted in
14 the United States as a sole proprietorship.

15 “(b) QUALIFIED MINORITY FUND INTEREST DE-
16 FINED.—For purposes of this subpart, the term ‘qualified
17 minority fund interest’ means any stock in a domestic cor-
18 poration or partnership interest in a domestic partnership
19 if—

20 “(1) such stock or partnership interest (as the
21 case may be) is issued after the date of the enact-
22 ment of this subpart solely in exchange for money,

23 “(2) such corporation or partnership (as the
24 case may be) was formed exclusively for purposes
25 of—

1 “(A) acquiring at original issuance (di-
2 rectly or through an underwriter) owner inter-
3 ests in qualified minority businesses, or

4 “(B) making loans to such businesses, and
5 “(3) at least 80 percent of the total bases of its
6 assets is represented by—

7 “(A) investments referred to in paragraph
8 (2), and

9 “(B) cash and cash equivalents.

10 “(c) MINORITY INDIVIDUALS.—For purposes of this
11 subpart, individuals are members of a minority if the par-
12 ticipation of such individuals in the free enterprise system
13 is hampered because of social disadvantage within the
14 meaning of section 301(d) of the Small Business Invest-
15 ment Act of 1958.

16 “(d) CONTROLLED GROUP RULES.—

17 “(1) IN GENERAL.—All corporations which are
18 members of the same controlled groups shall be
19 treated as 1 corporation for purposes of this sub-
20 part.

21 “(2) CONTROLLED GROUP.—For purposes of
22 paragraph (1), the term ‘controlled group’ has the
23 meaning given such term by section 179(d)(7).”

24 (b) CREDIT MADE PART OF GENERAL BUSINESS
25 CREDIT.—Subsection (b) of section 38 of such Code is

1 amended by striking “plus” at the end of paragraph (7),
2 by striking the period at the end of paragraph (8) and
3 inserting “, plus”, and by adding at the end thereof the
4 following new paragraph:

5 “(9) the minority venture capital fund credit
6 determined under section 54.”

7 (c) CREDIT MAY OFFSET 25 PERCENT OF MINIMUM
8 TAX.—Subsection (c) of section 38 of such Code is amend-
9 ed by redesignating paragraph (2) as paragraph (3) and
10 by inserting after paragraph (1) the following new para-
11 graph:

12 “(2) CREDIT FOR INVESTMENTS IN MINORITY
13 VENTURE CAPITAL FUNDS MAY OFFSET 25 PERCENT
14 OF MINIMUM TAX.—

15 “(A) IN GENERAL.—In the case of a C
16 corporation, the amount determined under
17 paragraph (1)(A) shall be reduced by the lesser
18 of—

19 “(i) the portion of the credit under
20 section 54 not used against the normal
21 limitation, or

22 “(ii) 25 percent of the taxpayer’s ten-
23 tative minimum tax for the taxable year.

24 “(B) PORTION OF THE CREDIT UNDER
25 SECTION 54 NOT USED AGAINST NORMAL

1 LIMIT.—For purposes of subparagraph (A), the
2 portion of the credit under section 54 for any
3 taxable year not used against the normal limita-
4 tion is the excess (if any) of—

5 “(i) the portion of the credit under
6 subsection (a) which is attributable to the
7 credit under section 54, over

8 “(ii) the limitation of paragraph (1)
9 (without regard to this paragraph) reduced
10 by the portion of the credit under sub-
11 section (a) which is not so attributable.

12 “(C) LIMITATION.—In no event shall this
13 paragraph permit the allowance of a credit
14 which would result in a net chapter 1 tax less
15 than an amount equal to 10 percent of the
16 amount determined under section 55(b)(1)(A)
17 without regard to the alternative tax net operat-
18 ing loss deduction. For purposes of the preced-
19 ing sentence, the term ‘net chapter 1 tax’
20 means the sum of the regular tax liability for
21 the taxable year and the tax imposed by section
22 55 for the taxable year, reduced by the sum of
23 the credits allowable under this part for the
24 taxable year (other than under section 34).”

1 (d) CLERICAL AMENDMENT.—The table of subparts
2 for part IV subchapter A of chapter 1 of such Code is
3 amended by adding at the end thereof the following item:

 “Subpart H. Incentives for investments in enterprises owned by
 disadvantaged individuals.”

4 (e) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to taxable years ending after the
6 date of the enactment of this Act.

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