

106TH CONGRESS  
2D SESSION

# S. 2354

To amend the Internal Revenue Code of 1986 to prevent the duplication of losses through the assumption of liabilities giving rise to a deduction.

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IN THE SENATE OF THE UNITED STATES

APRIL 4, 2000

Mr. ROTH (for himself and Mr. MOYNIHAN) 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 prevent the duplication of losses through the assumption of liabilities giving rise to a deduction.

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. PREVENTION OF DUPLICATION OF LOSS**  
4 **THROUGH ASSUMPTION OF LIABILITIES GIV-**  
5 **ING RISE TO A DEDUCTION.**

6 (a) IN GENERAL.—Section 358 of the Internal Rev-  
7 enue Code of 1986 (relating to basis to distributees) is  
8 amended by adding at the end the following new sub-  
9 section:

1       “(h) SPECIAL RULES FOR ASSUMPTION OF LIABIL-  
2 ITIES TO WHICH SUBSECTION (d) DOES NOT APPLY.—

3           “(1) IN GENERAL.—If, after application of the  
4 other provisions of this section to an exchange or se-  
5 ries of exchanges, the basis of property to which  
6 subsection (a)(1) applies exceeds the fair market  
7 value of such property, then such basis shall be re-  
8 duced (but not below such fair market value) by the  
9 amount (determined as of the date of the exchange)  
10 of any liability—

11           “(A) which is assumed in exchange for  
12 such property, and

13           “(B) with respect to which subsection  
14 (d)(1) does not apply to the assumption.

15       “(2) EXCEPTIONS.—Except as provided by the  
16 Secretary, paragraph (1) shall not apply to any li-  
17 ability if—

18           “(A) the trade or business with which the  
19 liability is associated is transferred to the per-  
20 son assuming the liability as part of the ex-  
21 change, or

22           “(B) substantially all of the assets with  
23 which the liability is associated are transferred  
24 to the person assuming the liability as part of  
25 the exchange.

1           “(3) LIABILITY.—For purposes of this sub-  
2           section, the term ‘liability’ shall include any fixed or  
3           contingent obligation to make payment, without re-  
4           gard to whether the obligation is otherwise taken  
5           into account for purposes of this title.”

6           (b) DETERMINATION OF AMOUNT OF LIABILITY AS-  
7           SUMED.—Section 357(d)(1) of the Internal Revenue Code  
8           of 1986 is amended by inserting “section 358(h),” after  
9           “section 358(d),”.

10          (c) APPLICATION OF COMPARABLE RULES TO PART-  
11          NERSHIPS AND S CORPORATIONS.—The Secretary of the  
12          Treasury or his delegate—

13               (1) shall prescribe rules which provide appro-  
14               priate adjustments under subchapter K of chapter 1  
15               of the Internal Revenue Code of 1986 to prevent the  
16               acceleration or duplication of losses through the as-  
17               sumption of (or transfer of assets subject to) liabil-  
18               ities described in section 358(h)(3) of such Code (as  
19               added by subsection (a)) in transactions involving  
20               partnerships, and

21               (2) may prescribe rules which provide appro-  
22               priate adjustments under subchapter S of chapter 1  
23               of such Code in transactions described in paragraph  
24               (1) involving S corporations rather than partner-  
25               ships.

1 (d) EFFECTIVE DATES.—

2 (1) IN GENERAL.—The amendments made by  
3 this section shall apply to assumptions of liability  
4 after October 18, 1999.

5 (2) RULES.—The rules prescribed under sub-  
6 section (c) shall apply to assumptions of liability  
7 after October 18, 1999, or such later date as may  
8 be prescribed in such rules.

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