

109TH CONGRESS
2D SESSION

H. R. 6122

To amend the Internal Revenue Code of 1986 to provide an additional standard deduction for real property taxes for nonitemizers.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 20, 2006

Mr. HOLT 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 additional standard deduction for real property taxes for nonitemizers.

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 “Nonitemizer Real
5 Property Tax Deduction Act of 2006”.

6 **SEC. 2. ADDITIONAL STANDARD DEDUCTION FOR REAL**
7 **PROPERTY TAXES FOR NONITEMIZERS.**

8 (a) IN GENERAL.—Section 63(c)(1) (defining stand-
9 ard deduction) is amended by striking “and” at the end
10 of subparagraph (A), by striking the period at the end

1 of subparagraph (B) and inserting “, and”, and by adding
 2 at the end the following new subparagraph:

3 “(C) the real property tax deduction.”.

4 (b) DEFINITION.—Section 63(c) is amended by add-
 5 ing at the end the following new paragraph:

6 “(8) REAL PROPERTY TAX DEDUCTION.—For
 7 purposes of paragraph (1), the real property tax de-
 8 duction is so much of the amount of State and local
 9 real property taxes (within the meaning of section
 10 164) paid or accrued by the taxpayer during the tax-
 11 able year which do not exceed \$500 (\$1,000 in the
 12 case of a joint return).”.

13 (c) EFFECTIVE DATE.—The amendments made by
 14 this section shall apply to taxable years beginning after
 15 December 31, 2006.

16 **SEC. 3. CLARIFICATION OF ECONOMIC SUBSTANCE DOC-**
 17 **TRINE.**

18 (a) IN GENERAL.—Section 7701 is amended by re-
 19 designating subsection (o) as subsection (p) and by insert-
 20 ing after subsection (n) the following new subsection:

21 “(o) CLARIFICATION OF ECONOMIC SUBSTANCE
 22 DOCTRINE; ETC.—

23 “(1) GENERAL RULES.—

24 “(A) IN GENERAL.—In any case in which
 25 a court determines that the economic substance

1 doctrine is relevant for purposes of this title to
2 a transaction (or series of transactions), such
3 transaction (or series of transactions) shall have
4 economic substance only if the requirements of
5 this paragraph are met.

6 “(B) DEFINITION OF ECONOMIC SUB-
7 STANCE.—For purposes of subparagraph (A)—

8 “(i) IN GENERAL.—A transaction has
9 economic substance only if—

10 “(I) the transaction changes in a
11 meaningful way (apart from Federal
12 tax effects) the taxpayer’s economic
13 position, and

14 “(II) the taxpayer has a substan-
15 tial nontax purpose for entering into
16 such transaction and the transaction
17 is a reasonable means of accom-
18 plishing such purpose.

19 In applying subclause (II), a purpose of
20 achieving a financial accounting benefit
21 shall not be taken into account in deter-
22 mining whether a transaction has a sub-
23 stantial nontax purpose if the origin of
24 such financial accounting benefit is a re-
25 duction of income tax.

“(ii) SPECIAL RULE WHERE TAX-PAYER RELIES ON PROFIT POTENTIAL.—A transaction shall not be treated as having economic substance by reason of having a potential for profit unless—

“(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

“(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

“(C) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(ii).

“(2) SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.—

“(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money

1 or the acquisition of financial capital directly or
2 indirectly from a tax-indifferent party shall not
3 be respected if the present value of the deduc-
4 tions to be claimed with respect to the trans-
5 action is substantially in excess of the present
6 value of the anticipated economic returns of the
7 person lending the money or providing the fi-
8 nancial capital. A public offering shall be treat-
9 ed as a borrowing, or an acquisition of financial
10 capital, from a tax-indifferent party if it is rea-
11 sonably expected that at least 50 percent of the
12 offering will be placed with tax-indifferent par-
13 ties.

14 “(B) ARTIFICIAL INCOME SHIFTING AND
15 BASIS ADJUSTMENTS.—The form of a trans-
16 action with a tax-indifferent party shall not be
17 respected if—

18 “(i) it results in an allocation of in-
19 come or gain to the tax-indifferent party in
20 excess of such party’s economic income or
21 gain, or

22 “(ii) it results in a basis adjustment
23 or shifting of basis on account of over-
24 stating the income or gain of the tax-indif-
25 ferent party.

1 “(3) DEFINITIONS AND SPECIAL RULES.—For
2 purposes of this subsection—

3 “(A) ECONOMIC SUBSTANCE DOCTRINE.—
4 The term ‘economic substance doctrine’ means
5 the common law doctrine under which tax bene-
6 fits under subtitle A with respect to a trans-
7 action are not allowable if the transaction does
8 not have economic substance or lacks a business
9 purpose.

10 “(B) TAX-INDIFFERENT PARTY.—The
11 term ‘tax-indifferent party’ means any person
12 or entity not subject to tax imposed by subtitle
13 A. A person shall be treated as a tax-indifferent
14 party with respect to a transaction if the items
15 taken into account with respect to the trans-
16 action have no substantial impact on such per-
17 son’s liability under subtitle A.

18 “(C) EXCEPTION FOR PERSONAL TRANS-
19 ACTIONS OF INDIVIDUALS.—In the case of an
20 individual, this subsection shall apply only to
21 transactions entered into in connection with a
22 trade or business or an activity engaged in for
23 the production of income.

1 “(D) TREATMENT OF LESSORS.—In apply-
2 ing paragraph (1)(B)(ii) to the lessor of tan-
3 gible property subject to a lease—

4 “(i) the expected net tax benefits with
5 respect to the leased property shall not in-
6 clude the benefits of—

7 “(I) depreciation,

8 “(II) any tax credit, or

9 “(III) any other deduction as
10 provided in guidance by the Secretary,
11 and

12 “(ii) subclause (II) of paragraph
13 (1)(B)(ii) shall be disregarded in deter-
14 mining whether any of such benefits are al-
15 lowable.

16 “(4) OTHER COMMON LAW DOCTRINES NOT AF-
17 FECTED.—Except as specifically provided in this
18 subsection, the provisions of this subsection shall not
19 be construed as altering or supplanting any other
20 rule of law, and the requirements of this subsection
21 shall be construed as being in addition to any such
22 other rule of law.

23 “(5) REGULATIONS.—The Secretary shall pre-
24 scribe such regulations as may be necessary or ap-
25 propriate to carry out the purposes of this sub-

1 section. Such regulations may include exemptions
 2 from the application of this subsection.”.

3 (b) EFFECTIVE DATE.—The amendments made by
 4 this section shall apply to transactions entered into after
 5 the date of the enactment of this Act.

6 **SEC. 4. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE**
 7 **TO TRANSACTIONS LACKING ECONOMIC SUB-**
 8 **STANCE, ETC.**

9 (a) IN GENERAL.—Subchapter A of chapter 68 is
 10 amended by inserting after section 6662A the following
 11 new section:

12 **“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
 13 **UTABLE TO TRANSACTIONS LACKING ECO-**
 14 **NOMIC SUBSTANCE, ETC.**

15 “(a) IMPOSITION OF PENALTY.—If a taxpayer has an
 16 noneconomic substance transaction understatement for
 17 any taxable year, there shall be added to the tax an
 18 amount equal to 40 percent of the amount of such under-
 19 statement.

20 “(b) REDUCTION OF PENALTY FOR DISCLOSED
 21 TRANSACTIONS.—Subsection (a) shall be applied by sub-
 22 stituting ‘20 percent’ for ‘40 percent’ with respect to the
 23 portion of any noneconomic substance transaction under-
 24 statement with respect to which the relevant facts affect-

1 ing the tax treatment of the item are adequately disclosed
2 in the return or a statement attached to the return.

3 “(c) NONECONOMIC SUBSTANCE TRANSACTION UN-
4 DERSTATEMENT.—For purposes of this section—

5 “(1) IN GENERAL.—The term ‘noneconomic
6 substance transaction understatement’ means any
7 amount which would be an understatement under
8 section 6662A(b)(1) if section 6662A were applied
9 by taking into account items attributable to non-
10 economic substance transactions rather than items
11 to which section 6662A would apply without regard
12 to this paragraph.

13 “(2) NONECONOMIC SUBSTANCE TRANS-
14 ACTION.—The term ‘noneconomic substance trans-
15 action’ means any transaction if—

16 “(A) there is a lack of economic substance
17 (within the meaning of section 7701(o)(1)) for
18 the transaction giving rise to the claimed ben-
19 efit or the transaction was not respected under
20 section 7701(o)(2), or

21 “(B) the transaction fails to meet the re-
22 quirements of any similar rule of law.

23 “(d) RULES APPLICABLE TO COMPROMISE OF PEN-
24 ALTY.—

1 “(1) IN GENERAL.—If the 1st letter of pro-
2 posed deficiency which allows the taxpayer an oppor-
3 tunity for administrative review in the Internal Rev-
4 enue Service Office of Appeals has been sent with
5 respect to a penalty to which this section applies,
6 only the Commissioner of Internal Revenue may
7 compromise all or any portion of such penalty.

8 “(2) APPLICABLE RULES.—The rules of para-
9 graphs (2) and (3) of section 6707A(d) shall apply
10 for purposes of paragraph (1).

11 “(e) COORDINATION WITH OTHER PENALTIES.—Ex-
12 cept as otherwise provided in this part, the penalty im-
13 posed by this section shall be in addition to any other pen-
14 alty imposed by this title.

15 “(f) CROSS REFERENCES.—

16 “(1) For coordination of penalty with under-
17 statements under section 6662 and other special
18 rules, see section 6662A(e).

19 “(2) For reporting of penalty imposed under
20 this section to the Securities and Exchange Commis-
21 sion, see section 6707A(e).”.

22 (b) COORDINATION WITH OTHER UNDERSTATE-
23 MENTS AND PENALTIES.—

24 (1) The second sentence of section
25 6662(d)(2)(A) is amended by inserting “and without

1 regard to items with respect to which a penalty is
2 imposed by section 6662B” before the period at the
3 end.

4 (2) Subsection (e) of section 6662A is amend-
5 ed—

6 (A) in paragraph (1), by inserting “and
7 noneconomic substance transaction understate-
8 ments” after “reportable transaction under-
9 statements” both places it appears,

10 (B) in paragraph (2)(A), by inserting
11 “6662B or” before “6663”,

12 (C) in paragraph (2)(B), by inserting “or
13 6662B” after “section 6662”,

14 (D) in paragraph (3), by inserting “or
15 noneconomic substance transaction understate-
16 ment” after “reportable transaction understate-
17 ment”, and

18 (E) by adding at the end the following new
19 paragraph:

20 “(4) NONECONOMIC SUBSTANCE TRANSACTION
21 UNDERSTATEMENT.—For purposes of this sub-
22 section, the term ‘noneconomic substance trans-
23 action understatement’ has the meaning given such
24 term by section 6662B(c).”.

1 (3) Subsection (e) of section 6707A is amend-
2 ed—

3 (A) by striking “or” at the end of subpara-
4 graph (B), and

5 (B) by striking subparagraph (C) and in-
6 serting the following new subparagraphs:

7 “(C) is required to pay a penalty under
8 section 6662B with respect to any noneconomic
9 substance transaction, or

10 “(D) is required to pay a penalty under
11 section 6662(h) with respect to any transaction
12 and would (but for section 6662A(e)(2)(C))
13 have been subject to penalty under section
14 6662A at a rate prescribed under section
15 6662A(c) or under section 6662B,”.

16 (c) CLERICAL AMENDMENT.—The table of sections
17 for part II of subchapter A of chapter 68 is amended by
18 inserting after the item relating to section 6662A the fol-
19 lowing new item:

 “Sec. 6662B. Penalty for understatements attributable to transactions lacking
 economic substance, etc.”.

20 (d) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to transactions entered into after
22 the date of the enactment of this Act.

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