

110TH CONGRESS
1ST SESSION

H. R. 1937

To amend the Internal Revenue Code of 1986 to allow a deduction for qualified timber gains and to modernize certain provisions applicable to timber real estate investment trusts.

IN THE HOUSE OF REPRESENTATIVES

APRIL 19, 2007

Mr. DAVIS of Alabama (for himself, Mr. BRADY of Texas, Mr. McDERMOTT, Mr. GINGREY, Mr. BONNER, Mr. CRENSHAW, Mr. BOYD of Florida, Mr. REICHERT, Mr. BAIRD, Mrs. McMORRIS RODGERS, Mr. SCOTT of Georgia, Mr. HASTINGS of Washington, Mr. JONES of North Carolina, and Mr. WALDEN of Oregon) 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 allow a deduction for qualified timber gains and to modernize certain provisions applicable to timber real estate investment trusts.

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 “Timber Revitalization
5 and Economic Enhancement (TREE) Act of 2007”.

1 **TITLE I—QUALIFIED TIMBER**
2 **GAIN**

3 **SEC. 101. DEDUCTION FOR QUALIFIED TIMBER GAIN.**

4 (a) IN GENERAL.—Part I of subchapter P of chapter
5 1 of the Internal Revenue Code of 1986 is amended by
6 adding at the end the following new section:

7 **“SEC. 1203. DEDUCTION FOR QUALIFIED TIMBER GAIN.**

8 “(a) IN GENERAL.—In the case of a taxpayer which
9 elects the application of this section for a taxable year,
10 there shall be allowed a deduction against gross income
11 in an amount equal to 60 percent of the lesser of—

12 “(1) the taxpayer’s qualified timber gain for
13 such year, or

14 “(2) the taxpayer’s net capital gain for such
15 year.

16 “(b) QUALIFIED TIMBER GAIN.—For purposes of
17 this section, the term ‘qualified timber gain’ means, with
18 respect to any taxpayer for any taxable year, the excess
19 (if any) of—

20 “(1) the sum of the taxpayer’s gains described
21 in subsections (a) and (b) of section 631 for such
22 year, over

23 “(2) the sum of the taxpayer’s losses described
24 in such subsections for such year.

25 “(c) SPECIAL RULES FOR PASS-THRU ENTITIES.—

1 “(1) In the case of any qualified timber gain of
 2 a pass-thru entity (as defined in section 1(h)(10))
 3 other than a real estate investment trust, the elec-
 4 tion under this section shall be made separately by
 5 each taxpayer subject to tax on such gain.

6 “(2) In the case of any qualified timber gain of
 7 a real estate investment trust, the election under
 8 this section shall be made by the real estate invest-
 9 ment trust.”.

10 (b) COORDINATION WITH MAXIMUM CAPITAL GAINS
 11 RATES.—

12 (1) TAXPAYERS OTHER THAN CORPORA-
 13 TIONS.—Paragraph (2) of section 1(h) of the Inter-
 14 nal Revenue Code of 1986 is amended to read as fol-
 15 lows:

16 “(2) REDUCTION OF NET CAPITAL GAIN.—For
 17 purposes of this subsection, the net capital gain for
 18 any taxable year shall be reduced (but not below
 19 zero) by the sum of—

20 “(A) the amount which the taxpayer takes
 21 into account as investment income under sec-
 22 tion 163(d)(4)(B)(iii), and

23 “(B) in the case of a taxable year with re-
 24 spect to which an election is in effect under sec-
 25 tion 1203, the lesser of—

1 “(i) the amount described in para-
2 graph (1) of section 1203(a), or

3 “(ii) the amount described in para-
4 graph (2) of such section.”.

5 (2) CORPORATIONS.—Section 1201 of such
6 Code is amended by redesignating subsection (b) as
7 subsection (c) and inserting after subsection (a) the
8 following new subsection:

9 “(b) QUALIFIED TIMBER GAIN NOT TAKEN INTO
10 ACCOUNT.—For purposes of this section, in the case of
11 a corporation with respect to which an election is in effect
12 under section 1203, the net capital gain for any taxable
13 year shall be reduced (but not below zero) by the corpora-
14 tion’s qualified timber gain (as defined in section
15 1203(b)).”.

16 (c) DEDUCTION ALLOWED WHETHER OR NOT INDIVIDUAL
17 ITEMIZES OTHER DEDUCTIONS.—Subsection (a)
18 of section 62 of the Internal Revenue Code of 1986 is
19 amended by inserting before the last sentence the fol-
20 lowing new paragraph:

21 “(22) QUALIFIED TIMBER GAINS.—The deduc-
22 tion allowed by section 1203.”.

23 (d) DEDUCTION ALLOWED IN COMPUTING ADJUSTED
24 CURRENT EARNINGS.—Subparagraph (C) of sec-

tion 56(g)(4) of the Internal Revenue Code of 1986 is amended by adding at the end the following new clause:

“(vii) DEDUCTION FOR QUALIFIED TIMBER GAIN.—Clause (i) shall not apply to any deduction allowed under section 1203.”.

(e) DEDUCTION ALLOWED IN COMPUTING TAXABLE INCOME OF ELECTING SMALL BUSINESS TRUSTS.—Subparagraph (C) of section 641(c)(2) of the Internal Revenue Code of 1986 is amended by inserting after clause (iii) the following new clause:

“(iv) The deduction allowed under section 1203.”.

(f) TREATMENT OF QUALIFIED TIMBER GAIN OF REAL ESTATE INVESTMENT TRUSTS.—Paragraph (3) of section 857(b) of the Internal Revenue Code of 1986 is amended by inserting after subparagraph (F) the following new subparagraph:

“(G) TREATMENT OF QUALIFIED TIMBER GAIN.—For purposes of this part, in the case of a real estate investment trust with respect to which an election is in effect under section 1203—

“(i) REDUCTION OF NET CAPITAL GAIN.—The net capital gain of the real es-

tate investment trust for any taxable year shall be reduced (but not below zero) by the real estate investment trust's qualified timber gain (as defined in section 1203(b)).

“(ii) ADJUSTMENT TO SHAREHOLDER'S BASIS ATTRIBUTABLE TO DEDUCTION FOR QUALIFIED TIMBER GAINS.—

“(I) IN GENERAL.—The adjusted basis of shares in the hands of the shareholder shall be increased by the amount of the deduction allowable under section 1203(a) as provided in subclauses (II) and (III).

“(II) ALLOCATION OF BASIS INCREASE FOR DISTRIBUTIONS MADE DURING TAXABLE YEAR.—For any taxable year of a real estate investment trust for which an election is in effect under section 1203, in the case of a distribution made with respect to shares during such taxable year of amounts attributable to the deduction allowable under section 1203(a), the

1 adjusted basis of such shares shall be
2 increased by the amount of such dis-
3 tributions.

4 “(III) ALLOCATION OF EX-
5 CESS.—If the deduction allowable
6 under section 1203(a) for a taxable
7 year exceeds the amount of distribu-
8 tions described in subclause (II), the
9 excess shall be allocated to every
10 shareholder of the real estate invest-
11 ment trust at the close of the trust’s
12 taxable year in the same manner as if
13 a distribution of such excess were
14 made with respect to such shares.

15 “(IV) DESIGNATIONS.—To the
16 extent provided in regulations, a real
17 estate investment trust shall designate
18 the amounts described in subclauses
19 (II) and (III) in a manner similar to
20 the designations provided with respect
21 to capital gains described in subpara-
22 graphs (C) and (D).

23 “(V) DEFINITIONS.—As used in
24 this subparagraph, the terms ‘share’
25 and ‘shareholder’ shall include bene-

1 ficial interests and holders of bene-
 2 ficial interests, respectively.

3 “(iii) EARNINGS AND PROFITS DEDUC-
 4 TION FOR QUALIFIED TIMBER GAINS.—The
 5 deduction allowable under section 1203(a)
 6 for a taxable year shall be allowed as a de-
 7 duction in computing the earnings and
 8 profits of the real estate investment trust
 9 for such taxable year. The earnings and
 10 profits of any such shareholder which is a
 11 corporation shall be appropriately adjusted
 12 in accordance with regulations prescribed
 13 by the Secretary.”.

14 (g) LOSS ATTRIBUTABLE TO BASIS ADJUSTMENT
 15 FOR DEDUCTION FOR QUALIFIED TIMBER GAIN OF REAL
 16 ESTATE INVESTMENT TRUSTS.—

17 (1) Section 857(b)(8) of the Internal Revenue
 18 Code of 1986 is amended by redesignating subpara-
 19 graphs (B) and (C) as subparagraphs (C) and (D),
 20 respectively, and by inserting after subparagraph
 21 (A) the following new subparagraph:

22 “(B) LOSS ATTRIBUTABLE TO BASIS AD-
 23 JUSTMENT FOR DEDUCTION FOR QUALIFIED
 24 TIMBER GAIN.—If—

1 “(i) a shareholder of a real estate in-
 2 vestment trust receives a basis adjustment
 3 provided under subsection (b)(3)(G)(ii),
 4 and

5 “(ii) the taxpayer has held such share
 6 or interest for 6 months or less,
 7 then any loss on the sale or exchange of such
 8 share or interest shall, to the extent of the
 9 amount described in clause (i), be disallowed.”.

10 (2) Subparagraph (D) of section 857(b)(8) of
 11 such Code, as redesignated by paragraph (1), is
 12 amended by striking “subparagraph (A)” and insert-
 13 ing “subparagraphs (A) and (B)”.

14 (h) CONFORMING AMENDMENTS.—

15 (1) Subparagraph (B) of section 172(d)(2) of
 16 the Internal Revenue Code of 1986 is amended to
 17 read as follows:

18 “(B) the exclusion under section 1202, and
 19 the deduction under section 1203, shall not be
 20 allowed.”.

21 (2) Paragraph (4) of section 642(c) of such
 22 Code is amended by striking the first sentence and
 23 inserting “To the extent that the amount otherwise
 24 allowable as a deduction under this subsection con-
 25 sists of gain described in section 1202(a) or quali-

1 fied timber gain (as defined in section 1203(b)),
2 proper adjustment shall be made for any exclusion
3 allowable to the estate or trust under section 1202
4 and for any deduction allowable to the estate or
5 trust under section 1203.”

6 (3) Paragraph (3) of section 643(a) of such
7 Code is amended by striking the last sentence and
8 inserting “The exclusion under section 1202 and the
9 deduction under section 1203 shall not be taken into
10 account.”.

11 (4) Subparagraph (C) of section 643(a)(6) of
12 such Code is amended to read as follows:

13 “(C) Paragraph (3) shall not apply to a
14 foreign trust. In the case of such a trust—

15 “(i) there shall be included gains from
16 the sale or exchange of capital assets, re-
17 duced by losses from such sales or ex-
18 changes to the extent such losses do not
19 exceed gains from such sales or exchanges,
20 and

21 “(ii) the deduction under section 1203
22 shall not be taken into account.”.

23 (5) Paragraph (4) of section 691(c) of such
24 Code is amended by inserting “1203,” after
25 “1202,”.

1 (6) Paragraph (2) of section 871(a) of such
 2 Code is amended by inserting “or 1203,” after
 3 “1202,”.

4 (7) The table of sections for part I of sub-
 5 chapter P of chapter 1 of such Code is amended by
 6 adding at the end the following new item:

“Sec. 1203. Deduction for qualified timber gain.”.

7 (i) EFFECTIVE DATE.—

8 (1) IN GENERAL.—The amendments made by
 9 this section shall apply to taxable years ending after
 10 the date of the enactment of this Act.

11 (2) TAXABLE YEARS WHICH INCLUDE DATE OF
 12 ENACTMENT.—In the case of any taxable year which
 13 includes the date of the enactment of this Act, for
 14 purposes of the Internal Revenue Code of 1986, the
 15 taxpayer’s qualified timber gain shall not exceed the
 16 excess that would be described in section 1203(b) of
 17 such Code, as added by this section, if only disposi-
 18 tions of timber after such date were taken into ac-
 19 count.

20 **SEC. 102. EXCISE TAX NOT APPLICABLE TO SECTION 1203**
 21 **DEDUCTION OF REAL ESTATE INVESTMENT**
 22 **TRUSTS.**

23 (a) IN GENERAL.—Subparagraphs (A) and (B) of
 24 section 4981(b)(1) of the Internal Revenue Code of 1986
 25 are amended to read as follows:

1 “(A) 85 percent of the real estate invest-
2 ment trust’s ordinary income, without regard to
3 any deduction allowable under section 1203, for
4 such calendar year, plus

5 “(B) 95 percent of the real estate invest-
6 ment trust’s capital gain net income, reduced
7 for any deduction allowable under section 1203,
8 for such calendar year.”.

9 (b) EFFECTIVE DATE.—

10 (1) IN GENERAL.—The amendments made by
11 this section shall apply to taxable years ending after
12 the date of the enactment of this Act.

13 (2) TAXABLE YEARS WHICH INCLUDE DATE OF
14 ENACTMENT.—In the case of any taxable year which
15 includes the date of the enactment of this Act, for
16 purposes of the Internal Revenue Code of 1986, the
17 taxpayer’s qualified timber gain shall not exceed the
18 excess that would be described in section 1203(b) of
19 such Code, as added by this Act, if only dispositions
20 of timber after such date were taken into account.

TITLE II—TIMBER REIT MODERNIZATION

SEC. 201. TIMBER GAIN QUALIFYING INCOME FOR REITS.

(a) IN GENERAL.—Section 856(c)(5) of the Internal Revenue Code of 1986 is amended by adding after subparagraph (G) the following new subparagraph:

“(H) TREATMENT OF TIMBER GAINS.—

“(i) IN GENERAL.—For purposes of this part, gain from the sale of real property described in paragraph (2)(D) and (3)(C) shall include gain which is—

“(I) recognized by an election under section 631(a) from timber owned by the real estate investment trust, the cutting of which is provided by a taxable REIT subsidiary of the real estate investment trust;

“(II) recognized under section 631(b); or

“(III) income which would constitute gain under subclause (I) or (II) but for the failure to meet the 1-year holding period requirement.

“(ii) SPECIAL RULES.—

1 “(I) For purposes of this subtitle,
 2 cut timber, the gain of which is recog-
 3 nized by a real estate investment trust
 4 pursuant to an election under section
 5 631(a) described in clause (i)(I) or so
 6 much of clause (i)(III) as relates to
 7 clause (i)(I), shall be deemed to be
 8 sold to the taxable REIT subsidiary of
 9 the real estate investment trust on the
 10 first day of the taxable year.

11 “(II) For purposes of this sub-
 12 title, income described in this sub-
 13 paragraph shall not be treated as gain
 14 from the sale of property described in
 15 section 1221(a)(1).”.

16 (b) EFFECTIVE DATE.—The amendments made by
 17 this section shall apply to dispositions after the date of
 18 the enactment of this Act.

19 **SEC. 202. MINERAL ROYALTY INCOME QUALIFYING INCOME**
 20 **FOR TIMBER REITS.**

21 (a) IN GENERAL.—Section 856(c)(2) of the Internal
 22 Revenue Code of 1986 is amended by adding after sub-
 23 paragraph (H) the following new subparagraph:

24 “(I) mineral royalty income from real
 25 property owned by a timber real estate invest-

1 ment trust (as defined in paragraph (5)(I))
 2 held, or once held, in connection with the trade
 3 or business of producing timber by such real es-
 4 tate investment trust;”.

5 (b) TIMBER REAL ESTATE INVESTMENT TRUST.—
 6 Section 856(c)(5) of the Internal Revenue Code of 1986
 7 is amended by adding after subparagraph (H) the fol-
 8 lowing new subparagraph:

9 “(I) TIMBER REAL ESTATE INVESTMENT
 10 TRUST.—The term ‘timber real estate invest-
 11 ment trust’ means a real estate investment
 12 trust in which more than 50 percent in value of
 13 its total assets consists of real property held in
 14 connection with the trade or business of pro-
 15 ducing timber.”.

16 (c) EFFECTIVE DATES.—

17 (1) SUBSECTION (a).—The amendment made
 18 by subsection (a) shall apply to income earned after
 19 the date of the enactment of this Act.

20 (2) SUBSECTION (b).—The amendments made
 21 by subsection (b) shall apply to taxable years ending
 22 after the date of the enactment of this Act.

1 **SEC. 203. CONFORMING TAXABLE REIT SUBSIDIARY ASSET**
2 **TEST FOR TIMBER REITS.**

3 (a) IN GENERAL.—Section 856(c)(4)(B)(ii) of the In-
4 ternal Revenue Code of 1986 is amended by inserting “(25
5 percent in the case of a timber real estate investment
6 trust)” after “not more than 20 percent of the value of
7 its total assets is represented by securities of one or more
8 taxable REIT subsidiaries”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 this section shall be effective after the date of the enact-
11 ment of this Act.

12 **SEC. 204. SAFE HARBOR FOR TIMBER PROPERTY.**

13 (a) IN GENERAL.—Section 857(b)(6) of the Internal
14 Revenue Code of 1986 (relating to income from prohibited
15 transactions) is amended—

16 (1) by striking “4 years” in subparagraph
17 (D)(i) and inserting “2 years”, and

18 (2) by striking “4-year period” in subpara-
19 graphs (D)(ii) and (D)(iii) and inserting “2-year pe-
20 riod”.

21 (b) PROHIBITED TRANSACTIONS.—Section
22 857(b)(6)(D)(v) of such Code is amended by inserting “or
23 a taxable REIT subsidiary” after “independent contractor
24 (as defined in section 856(d)(3)) from whom the trust
25 itself does not derive or receive any income”.

1 (c) SALES THAT ARE NOT PROHIBITED TRANS-
2 ACTIONS.—Section 857(b)(6) of such Code is amended by
3 adding at the end the following new subparagraph:

4 “(G) SALES OF PROPERTY THAT ARE NOT
5 A PROHIBITED TRANSACTION.—The sale of
6 property which is not a prohibited transaction
7 through application of subparagraph (D) shall
8 be considered property held for investment or
9 for use in a trade or business and not property
10 described in section 1221(a)(1) for all purposes
11 of this subtitle.”.

12 (d) EFFECTIVE DATE.—The amendments made by
13 this section shall be effective for dispositions after the date
14 of the enactment of this Act.

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