

110TH CONGRESS
2D SESSION

H. R. 6640

To amend the Internal Revenue Code of 1986 to provide relief in the case of federally declared disasters.

IN THE HOUSE OF REPRESENTATIVES

JULY 29, 2008

Mr. KIND (for himself, Mr. LEWIS of Georgia, Mr. TANNER, Mr. MEEK of Florida, Mr. DAVIS of Alabama, Ms. MOORE of Wisconsin, Mr. SENSENBRENNER, Mr. MELANCON, Mr. CAZAYOUX, Mr. JEFFERSON, Mr. CARNAHAN, Mr. PAUL, Mr. MICHAUD, and Mr. BISHOP of New York) 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 relief in the case of federally declared disasters.

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 “Fair Disaster Tax Re-
5 lief Act of 2008”.

1 **SEC. 2. LOSSES ATTRIBUTABLE TO FEDERALLY DECLARED**
2 **DISASTERS.**

3 (a) **WAIVER OF ADJUSTED GROSS INCOME LIMITA-**
4 **TION.—**

5 (1) **IN GENERAL.—**Subsection (h) of section
6 165 of the Internal Revenue Code of 1986 is amend-
7 ed by redesignating paragraphs (3) and (4) as para-
8 graphs (4) and (5), respectively, and by inserting
9 after paragraph (2) the following new paragraph:

10 “(3) **SPECIAL RULE FOR LOSSES IN FEDERALLY**
11 **DECLARED DISASTERS.—**

12 “(A) **IN GENERAL.—**If an individual has a
13 net disaster loss for any taxable year, the
14 amount determined under paragraph (2)(A)(ii)
15 shall be the sum of—

16 “(i) such net disaster loss, and

17 “(ii) so much of the excess referred to
18 in the matter preceding clause (i) of para-
19 graph (2)(A) (reduced by the amount in
20 clause (i) of this subparagraph) as exceeds
21 10 percent of the adjusted gross income of
22 the individual.

23 “(B) **NET DISASTER LOSS.—**For purposes
24 of subparagraph (A), the term ‘net disaster
25 loss’ means the excess of—

26 “(i) the personal casualty losses—

1 “(I) attributable to a federally
2 declared disaster, and

3 “(II) occurring in a disaster
4 area, over

5 “(ii) personal casualty gains.

6 “(C) FEDERALLY DECLARED DISASTER.—

7 For purposes of this paragraph—

8 “(i) FEDERALLY DECLARED DIS-
9 ASTER.—The term ‘federally declared dis-
10 aster’ means any disaster subsequently de-
11 termined by the President of the United
12 States to warrant assistance by the Fed-
13 eral Government under the Robert T. Staf-
14 ford Disaster Relief and Emergency Assist-
15 ance Act.

16 “(ii) DISASTER AREA.—The term ‘dis-
17 aster area’ means the area so determined
18 to warrant such assistance.”.

19 (2) CONFORMING AMENDMENTS.—

20 (A) Section 165(h)(4)(B) (as so redesign-
21 ated) is amended by striking “paragraph (2)”
22 and inserting “paragraphs (2) and (3)”.

23 (B) Section 165(i)(1) of such Code is
24 amended by striking “loss” and all that follows
25 through “Act” and inserting “loss occurring in

1 a disaster area (as defined by clause (ii) of sub-
2 section (h)(3)(C)) and attributable to a feder-
3 ally declared disaster (as defined by clause (i)
4 of such subsection)”).

5 (C) Section 165(i)(4) of such Code is
6 amended by striking “Presidentially declared
7 disaster (as defined by section 1033(h)(3))”
8 and inserting “federally declared disaster (as
9 defined by subsection (h)(3)(C)(i))”.

10 (D)(i) So much of subsection (h) of section
11 1033 of such Code as precedes subparagraph
12 (A) of paragraph (1) thereof is amended to
13 read as follows:

14 “(h) SPECIAL RULES FOR PROPERTY DAMAGED BY
15 FEDERALLY DECLARED DISASTERS.—

16 “(1) PRINCIPAL RESIDENCES.—If the tax-
17 payer’s principal residence or any of its contents is
18 located in a disaster area and is compulsorily or in-
19 voluntarily converted as a result of a federally de-
20 clared disaster—”.

21 (ii) Paragraph (2) of section 1033(h) of
22 such Code is amended by striking “investment”
23 and all that follows through “disaster” and in-
24 serting “investment located in a disaster area

1 and compulsorily or involuntarily converted as a
2 result of a federally declared disaster”.

3 (iii) Paragraph (3) of section 1033(h) is
4 amended to read as follows:

5 “(3) FEDERALLY DECLARED DISASTER; DIS-
6 ASTER AREA.—The terms “federally declared dis-
7 aster” and “disaster area” shall have the respective
8 meaning given such terms by section 165(h)(3)(C).”.

9 (iv) Section 139(c)(2) of such Code is
10 amended to read as follows:

11 “(2) federally declared disaster (as defined by
12 section 165(h)(3)(C)(i)),”.

13 (v) Subclause (II) of section
14 172(b)(1)(F)(ii) of such Code is amended by
15 striking “Presidentially declared disasters (as
16 defined in section 1033(h)(3))” and inserting
17 “federally declared disasters (as defined by sub-
18 section (h)(3)(C)(i))”.

19 (vi) Subclause (III) of section
20 172(b)(1)(F)(ii) of such Code is amended by
21 striking “Presidentially declared disasters” and
22 inserting “federally declared disasters”.

23 (vii) Subsection (a) of section 7508A of
24 such Code is amended by striking “Presi-
25 dentially declared disaster (as defined in section

1 1033(h)(3))” and inserting “federally declared
2 disaster (as defined by section
3 165(h)(3)(C)(i))”.

4 (b) INCREASE IN STANDARD DEDUCTION BY DIS-
5 ASTER CASUALTY LOSS.—

6 (1) IN GENERAL.—Paragraph (1) of section
7 63(c) of such Code (defining standard deduction) is
8 amended by striking “and” at the end of subpara-
9 graph (B), by striking the period at the end of sub-
10 paragraph (C) and inserting “, and”, and by adding
11 at the end the following new subparagraph:

12 “(D) the disaster loss deduction.”.

13 (2) DISASTER LOSS DEDUCTION.—Subsection
14 (c) of section 63 of such Code is amended by adding
15 at the end the following new paragraph:

16 “(8) DISASTER LOSS DEDUCTION.—For the
17 purposes of paragraph (1), the term ‘disaster loss
18 deduction’ means the net disaster loss (as defined in
19 section 165(h)(3)(B)).”.

20 (3) ALLOWANCE IN COMPUTING ALTERNATIVE
21 MINIMUM TAXABLE INCOME.—Subparagraph (E) of
22 section 56(b)(1) of such Code (relating to standard
23 deduction and deduction for personal exemptions not
24 allowed) is amended by adding at the end the fol-
25 lowing new sentence: “The preceding sentence shall

1 not apply to so much of the standard deduction as
2 is determined under section 63(c)(1)(D).”.

3 (c) INCREASE IN LIMITATION ON INDIVIDUAL LOSS
4 PER CASUALTY.—Paragraph (1) of section 165(h) of such
5 Code (relating to treatment of casualty gains and losses)
6 is amended by striking “\$100” and inserting “\$500”.

7 (d) EFFECTIVE DATES.—

8 (1) Except as provided by paragraph (2), the
9 amendments made by this section shall apply to tax-
10 able years beginning after December 31, 2007.

11 (2) The amendment made by subsection (c)
12 shall apply to taxable years beginning after Decem-
13 ber 31, 2008.

14 **SEC. 3. EXPENSING OF QUALIFIED DISASTER EXPENSES.**

15 (a) IN GENERAL.—Part VI of subchapter B of chap-
16 ter 1 of the Internal Revenue Code of 1986 (relating to
17 itemized deductions for individuals and corporations) is
18 amended by inserting after section 198 the following new
19 section:

20 **“SEC. 198A. EXPENSING OF QUALIFIED DISASTER EX-**
21 **PENSES.**

22 “(a) IN GENERAL.—A taxpayer may elect to treat
23 any qualified disaster expenses which are paid or incurred
24 by the taxpayer as an expense which is not chargeable to
25 capital account. Any expense which is so treated shall be

1 allowed as a deduction for the taxable year in which it
2 is paid or incurred.

3 “(b) QUALIFIED DISASTER EXPENSE.—For purposes
4 of this section, the term ‘qualified disaster expense’ means
5 any expenditure—

6 “(1) which is paid or incurred in connection
7 with a trade or business or with business-related
8 property,

9 “(2) which is—

10 “(A) for the abatement or control of haz-
11 ardous substances that were released on ac-
12 count of a federally declared disaster,

13 “(B) for the removal of debris from, or the
14 demolition of structures on, real property which
15 is business-related property damaged or de-
16 stroyed as a result of a federally declared dis-
17 aster, or

18 “(C) for the repair of business-related
19 property damaged as a result of a federally de-
20 clared disaster, and

21 “(3) is otherwise chargeable to capital account.

22 “(c) OTHER DEFINITIONS.—For purposes of this
23 section—

24 “(1) BUSINESS-RELATED PROPERTY.—The
25 term ‘business-related property’ means property—

1 “(A) held by the taxpayer for use in a
2 trade or business or for the production of in-
3 come, or

4 “(B) described in section 1221(a)(1) in the
5 hands of the taxpayer.

6 “(2) **FEDERALLY DECLARED DISASTER.**—The
7 term ‘federally declared disaster’ has the meaning
8 given such term by section 165(h)(3)(C)(i).

9 “(d) **DEDUCTION RECAPTURED AS ORDINARY IN-**
10 **COME ON SALE, ETC.**—Solely for purposes of section
11 1245, in the case of property to which a qualified disaster
12 expense would have been capitalized but for this section—

13 “(1) the deduction allowed by this section for
14 such expense shall be treated as a deduction for de-
15 preciation, and

16 “(2) such property (if not otherwise section
17 1245 property) shall be treated as section 1245
18 property solely for purposes of applying section 1245
19 to such deduction.

20 “(e) **COORDINATION WITH OTHER PROVISIONS.**—
21 Sections 198, 280B, and 468 shall not apply to amounts
22 which are treated as expenses under this section.

23 “(f) **REGULATIONS.**—The Secretary shall prescribe
24 such regulations as may be necessary or appropriate to
25 carry out the purposes of this section.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
2 for part VI of subchapter B of chapter 1 of such Code
3 is amended by inserting after the item relating to section
4 198 the following new item:

“Sec. 198A. Expensing of Qualified Disaster Expenses.”.

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to amounts paid or incurred after
7 December 31, 2007.

8 **SEC. 4. NET OPERATING LOSSES ATTRIBUTABLE TO FED-**
9 **ERALLY DECLARED DISASTERS.**

10 (a) IN GENERAL.—Paragraph (1) of section 172(b)
11 of the Internal Revenue Code of 1986 (relating to years
12 to which loss may be carried) is amended by adding at
13 the end the following new subparagraph:

14 “(J) CERTAIN LOSSES ATTRIBUTABLE TO
15 FEDERALLY DECLARED DISASTERS.—In the
16 case of a taxpayer who has a qualified disaster
17 loss (as defined in subsection (j)), such loss
18 shall be a net operating loss carryback to each
19 of the 5 taxable years preceding the taxable
20 year of such loss.”.

21 (b) QUALIFIED DISASTER LOSS.—Section 172 of
22 such Code (relating to net operating loss deduction) is
23 amended by redesignating subsections (j) and (k) as sub-
24 sections (k) and (l), respectively, and by inserting after
25 subsection (i) the following new subsection:

1 “(j) RULES RELATING TO QUALIFIED DISASTER
2 LOSSES.—For purposes of this section—

3 “(1) IN GENERAL.—The term ‘qualified dis-
4 aster loss’ means the lesser of—

5 “(A) the sum of—

6 “(i) the losses allowable under section
7 165 for the taxable year—

8 “(I) attributable to a federally
9 declared disaster (as defined in sec-
10 tion 165(h)(3)(C)(i)), and

11 “(II) occurring in a disaster area
12 (as defined in section
13 165(h)(3)(C)(ii)), and

14 “(ii) the deduction for the taxable
15 year for qualified disaster expenses which
16 is allowable under section 198A(a) or
17 which would be so allowable if not other-
18 wise treated as an expense, or

19 “(B) the net operating loss for such tax-
20 able year.

21 “(2) COORDINATION WITH SUBSECTION
22 (b)(2).—For purposes of applying subsection (b)(2),
23 a qualified disaster loss for any taxable year shall be
24 treated in a manner similar to the manner in which
25 a specified liability loss is treated.

1 “(3) ELECTION.—Any taxpayer entitled to a 5-
2 year carryback under subsection (b)(1)(J) from any
3 loss year may elect to have the carryback period
4 with respect to such loss year determined without re-
5 gard to subsection (b)(1)(J). Such election shall be
6 made in such manner as may be prescribed by the
7 Secretary and shall be made by the due date (includ-
8 ing extensions of time) for filing the taxpayer’s re-
9 turn for the taxable year of the net operating loss.
10 Such election, once made for any taxable year, shall
11 be irrevocable for such taxable year.”.

12 (c) LOSS DEDUCTION ALLOWED IN COMPUTING AL-
13 TERNATIVE MINIMUM TAXABLE INCOME.—Subsection (d)
14 of section 56 of such Code (defining alternative tax net
15 operating loss deduction) is amended by adding at the end
16 the following new paragraph:

17 “(3) NET OPERATING LOSS ATTRIBUTABLE TO
18 FEDERALLY DECLARED DISASTERS.—In the case of
19 a taxpayer which has a qualified disaster loss (as de-
20 fined by section 172(b)(1)(J)) for the taxable year,
21 paragraph (1) shall be applied by increasing the
22 amount determined under subparagraph (A)(ii)(I)
23 thereof by the sum of the carrybacks and carryovers
24 of such loss.”.

25 (d) CONFORMING AMENDMENTS.—

1 (1) Clause (ii) of section 172(b)(1)(F) of such
2 Code is amended by inserting “or qualified disaster
3 loss (as defined in subsection (j))” before the period
4 at the end of the last sentence.

5 (2) Paragraph (1) of section 172(i) of such
6 Code is amended by adding at the end the following
7 new flush sentence:

8 “Such term shall not include any qualified disaster
9 loss (as defined in subsection (j)).”.

10 (e) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to losses arising in taxable years
12 beginning after December 31, 2007.

13 **SEC. 5. WAIVER OF CERTAIN MORTGAGE REVENUE BOND**
14 **REQUIREMENTS FOLLOWING FEDERALLY DE-**
15 **CLARED DISASTERS.**

16 (a) IN GENERAL.—Paragraph (11) of section 143(k)
17 of the Internal Revenue Code of 1986 is amended to read
18 as follows:

19 “(11) SPECIAL RULES FOR FEDERALLY DE-
20 CLARED DISASTERS.—

21 “(A) PRINCIPAL RESIDENCE DE-
22 STROYED.—If the principal residence (within
23 the meaning of section 121) of a taxpayer is—

1 “(i) rendered unsafe for use as a resi-
2 dence by reason of a federally declared dis-
3 aster, or

4 “(ii) demolished or relocated by rea-
5 son of an order of the government of a
6 State or political subdivision thereof on ac-
7 count of a federally declared disaster,

8 then for the 2-year period beginning on the
9 date of the disaster declaration, subsection
10 (d)(1) shall not apply with respect to such tax-
11 payer and subsection (e) shall be applied by
12 substituting ‘110’ for ‘90’ in paragraph (1)
13 thereof.

14 “(B) PRINCIPLE RESIDENCE DAMAGED.—

15 “(i) IN GENERAL.—If the principal
16 residence (within the meaning of section
17 121) of a taxpayer resulting from a feder-
18 ally declared disaster was damaged, any
19 owner-financing provided in connection
20 with the repair or reconstruction of such
21 residence shall be treated as a qualified re-
22 habilitation loan.

23 “(ii) LIMITATION.—The aggregate
24 owner-financing to which clause (i) applies
25 shall not exceed the lesser of—

1 “(I) the cost of such repair or re-
2 construction, or

3 “(II) \$150,000.

4 “(C) FEDERALLY DECLARED DISASTER.—
5 For purposes of this paragraph, the term ‘fed-
6 erally declared disaster’ has the meaning given
7 such term by section 165(h)(3)(C)(i).”.

8 (b) EFFECTIVE DATE.—The amendment made by
9 subsection (a) shall apply to disasters occurring after De-
10 cember 31, 2007.

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