

110TH CONGRESS
2D SESSION

H. R. 6827

To amend the Internal Revenue Code of 1986 to provide for rollover of gain from divesting certain qualified securities of business entities engaged in Iran or Sudan discouraged activities.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 1, 2008

Mr. SHERMAN (for himself, Ms. ROS-LEHTINEN, Mr. BERMAN, Ms. BERKLEY, Mrs. JONES of Ohio, Mr. DAVIS of Alabama, Mr. KIRK, Mr. PERLMUTTER, Mr. BURTON of Indiana, Mr. CAMPBELL of California, and Mr. ENGEL) 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 for rollover of gain from divesting certain qualified securities of business entities engaged in Iran or Sudan discouraged activities.

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 “Enable Divestment
5 from Sudan and Iran Act of 2008”.

1 **SEC. 2. ROLLOVER OF GAIN FROM DIVESTING CERTAIN**
2 **QUALIFIED SECURITIES OF BUSINESS ENTI-**
3 **TIES ENGAGED IN DISCOURAGED ACTIVITIES**
4 **IN IRAN OR SUDAN.**

5 (a) IN GENERAL.—Part III of subchapter O of chap-
6 ter 1 of the Internal Revenue Code of 1986 (relating to
7 common nontaxable exchanges) is amended by adding at
8 the end the following new section:

9 **“SEC. 1046. ROLLOVER OF GAIN FROM DIVESTING CERTAIN**
10 **QUALIFIED SECURITIES OF BUSINESS ENTI-**
11 **TIES ENGAGED IN DISCOURAGED ACTIVITIES**
12 **IN IRAN OR SUDAN.**

13 “(a) NONRECOGNITION OF GAIN.—

14 “(1) IN GENERAL.—In the case of any sale of
15 any qualified security held by a taxpayer with re-
16 spect to which such taxpayer elects the application
17 of this section, in any business entity that is en-
18 gaged in an Iran discouraged activity or a Sudan
19 discouraged activity, gain from such sale shall be
20 recognized only to the extent that the amount real-
21 ized on such sale exceeds—

22 “(A) the cost of any qualified replacement
23 property purchased by the taxpayer during the
24 30-day period beginning on the date of such
25 sale, reduced by

1 “(B) any portion of such cost previously
2 taken into account under this section.

3 “(2) EXCEPTION FOR ORDINARY INCOME
4 GAIN.—This section shall not apply to any gain
5 which is treated as ordinary income for purposes of
6 this title.

7 “(3) EXCEPTION WHERE TAXPAYER OWNS CON-
8 TROLLING INTEREST IN THE BUSINESS ENTITY.—

9 “(A) IN GENERAL.—Paragraph (1) shall
10 not apply to any sale if, immediately before
11 such sale, the taxpayer owns a controlling inter-
12 est in the business entity that is engaged in an
13 Iran discouraged activity or a Sudan discour-
14 aged activity.

15 “(B) CONTROLLING INTEREST.—For pur-
16 poses of subparagraph (A), the term ‘control-
17 ling interest’ means direct or indirect ownership
18 of at least 50 percent of the total voting power
19 and value of all classes of stock of a corpora-
20 tion. For purposes of the preceding sentence,
21 the rules of paragraphs (1) and (5) of section
22 267(c) shall apply.

23 “(C) AGGREGATION RULE.—For purposes
24 of this paragraph, all members of the same con-
25 trolled group of corporations (within the mean-

ing of section 267(f)) and all persons under common control (within the meaning of section 52(b) but determined by treating an interest of more than 50 percent as a controlling interest) shall be treated as 1 person.

“(b) DEFINITIONS AND SPECIAL RULES RELATING TO SECURITIES AND REPLACEMENT PROPERTY.—For purposes of this section—

“(1) QUALIFIED SECURITY.—

“(A) IN GENERAL.—The term ‘qualified security’ means any security held by a taxpayer in any business entity that is engaged in an Iran discouraged activity or a Sudan discouraged activity.

“(B) EXCEPTION.—Such term shall not include any security purchased or otherwise acquired after the date of the enactment of this section which, at the time of such purchase or acquisition, was issued by a business entity then engaged in an Iran discouraged activity or a Sudan discouraged activity.

“(C) SECURITY DEFINED.—The term ‘security’ has the meaning given such term by section 165(g)(2).

“(2) QUALIFIED REPLACEMENT PROPERTY.—

1 “(A) IN GENERAL.—The term ‘qualified
2 replacement property’ means any security of a
3 business entity that, on the date of purchase by
4 the taxpayer—

5 “(i) is not engaged in an Iran discour-
6 aged activity or a Sudan discouraged activ-
7 ity on such date,

8 “(ii) is not a member of an expanded
9 affiliated group, any member of which is
10 engaged in an Iran discouraged activity or
11 a Sudan discouraged activity on such date,
12 and

13 “(iii) meets the requirements of sub-
14 paragraph (B).

15 “(B) REPLACEMENT PROPERTY.—Property
16 meets the requirements of this paragraph if,
17 with respect to the sale of any security—

18 “(i) except as provided in clause (ii),
19 in the case that the security is a share of
20 stock in a corporation, the replacement
21 property is a share of stock in a corpora-
22 tion,

23 “(ii) in the case that the security is a
24 share of stock of a regulated investment
25 company, real estate investment trust,

1 hedge fund, investment partnership, or
2 similar business entity, the replacement
3 property is a share of stock in a regulated
4 investment company, real estate invest-
5 ment trust, hedge fund, investment part-
6 nership, or similar business entity,

7 “(iii) in the case that the security is
8 a right to subscribe for, or to receive, a
9 share of stock in a corporation, the re-
10 placement property is a right to subscribe
11 for, or to receive, a share of stock in a cor-
12 poration, and

13 “(iv) in the case that the security is
14 a bond, debenture, note, or certificate, or
15 other evidence of indebtedness issued by a
16 corporation, with interest coupons or in
17 registered form, the replacement property
18 is a bond, debenture, note, or certificate,
19 or other evidence of indebtedness issued by
20 a corporation, with interest coupons or in
21 registered form.

22 “(C) DEEMED INVESTMENT IF INVESTING
23 IN ENTITIES ENGAGED IN DISCOURAGED AC-
24 TIVITIES.—Any regulated investment company,
25 real estate investment trust, hedge fund, invest-

1 ment partnership, or similar business entity,
2 which invests in the securities—

3 “(i) issued by a business entity deter-
4 mined to be engaging in Iran discouraged
5 activities or Sudan discouraged activities,
6 or

7 “(ii) issued by the government of
8 Sudan or Iran or any agency thereof,
9 shall be deemed to be a business entity engag-
10 ing in Iran discouraged activities or Sudan dis-
11 couraged activities.

12 “(D) BUSINESS DECLARATION OF POL-
13 ICY.—

14 “(i) IN GENERAL.—Notwithstanding
15 any other provision of this section, in the
16 case of a business entity described in
17 clause (iii), a security in such business en-
18 tity shall not be treated as qualified re-
19 placement property unless the business en-
20 tity has made the following declaration: ‘It
21 is our policy not to make investments in
22 business entities which engage in Iran dis-
23 couraged activities or Sudan discouraged
24 activities as defined in section 1046 of the
25 Internal Revenue Code of 1986, and to use

1 due diligence to avoid making such invest-
2 ments. It is our policy to divest on or be-
3 fore December 31, 2010, from business en-
4 tities engaged in either Iran discouraged
5 activities or Sudan discouraged activities.’.

6 “(ii) NOT QUALIFIED SECURITY.—If a
7 business entity described in clause (iii) has
8 made the declaration specified in clause (i),
9 then from the time of such declaration an
10 interest in such business entity shall not be
11 treated as a qualified security.

12 “(iii) BUSINESS ENTITY DE-
13 SCRIBED.—A business entity described in
14 this clause is a regulated investment com-
15 pany, real estate investment trust, hedge
16 fund, investment partnership, or similar
17 business entity.

18 “(E) EXPANDED AFFILIATED GROUP.—
19 The term ‘expanded affiliated group’ means an
20 affiliated group as defined in section 1504(a),
21 determined—

22 “(i) by substituting ‘more than 50
23 percent’ for ‘at least 80 percent’ each place
24 it appears, and

1 “(ii) without regard to paragraphs (2)
2 and (4) of section 1504(b).

3 “(F) BASIS ADJUSTMENTS.—If gain from
4 any sale is not recognized by reason of sub-
5 section (a), such gain shall be applied to reduce
6 (in the order acquired) the basis for deter-
7 mining gain or loss of any qualified replacement
8 property which is purchased by the taxpayer
9 during the 30-day period described in sub-
10 section (a).

11 “(G) HOLDING PERIOD.—For purposes of
12 determining the period for which the taxpayer
13 has held qualified replacement property the ac-
14 quisition of which resulted in the nonrecognition
15 under subsection (a) of any part of the gain re-
16 alized on the sale of a qualified security, there
17 shall be included the period for which such
18 qualified security had been held by the tax-
19 payer.

20 “(3) SPECIAL RULE FOR SECURITIES OF CER-
21 TAIN ENTITIES.—

22 “(A) IN GENERAL.—For any business enti-
23 ty described in subparagraph (C), a security in
24 such business entity shall be treated as quali-
25 fied replacement property if the business entity

1 has made the following declaration: ‘It is our
2 policy not to make investments in any person
3 having an investment in, or carrying on a trade
4 or business (within the meaning of section 162)
5 in or with, Iran and Sudan. This policy may or
6 may not include investments concerning the
7 provision of food, medicine, humanitarian serv-
8 ices in or to Iran or Sudan or investments con-
9 cerning marginalized areas of Sudan (as de-
10 fined in section 2 of the Sudan Accountability
11 and Divestment Act of 2007 (121 Stat.
12 2518)).’.

13 “(B) NOT QUALIFIED SECURITY.—If a
14 business entity described in subparagraph (C)
15 has made the declaration specified in subpara-
16 graph (A), then from the time of such declara-
17 tion an interest in such business entity shall not
18 be treated as a qualified security.

19 “(C) BUSINESS ENTITY DESCRIBED.—A
20 business entity described in this subparagraph
21 is a regulated investment company, real estate
22 investment trust, hedge fund, investment part-
23 nership, or similar business entity.

24 “(D) CERTAIN BUSINESS ENTITIES AS RE-
25 PLACEMENT PROPERTY.—A business entity de-

1 scribed in subparagraph (C) making the dec-
2 laration described in subparagraph (A) may
3 qualify as replacement property if it has adopt-
4 ed restrictions on investment in persons that in-
5 vest in or carrying on a trade or business (with-
6 in the meaning of section 162) in or with coun-
7 tries other than Iran and Sudan that are des-
8 ignated as state sponsors of terrorism under
9 section 6(j) of the Export Administration Act of
10 1979, section 40 of the Arms Export Control
11 Act, or section 620A of the Foreign Assistance
12 Act of 1961.

13 “(4) BUSINESS ENTITY.—The term ‘business
14 entity’ means any corporation, limited liability part-
15 nership, limited liability company, or any other busi-
16 ness entity conducting business activities in which
17 the taxpayer has purchased or can purchase securi-
18 ties.

19 “(c) DEFINITIONS AND RULES RELATING TO SUDAN
20 DISCOURAGED ACTIVITY.—For purposes of this section,
21 the term ‘Sudan discouraged activity’ means an invest-
22 ment in any business operation described in section 3(d)
23 of the Sudan Accountability and Divestment Act of 2007
24 (121 Stat. 2518).

1 “(d) DEFINITIONS AND RULES RELATING TO IRAN
2 DISCOURAGED ACTIVITIES.—For purposes of this sec-
3 tion—

4 “(1) IRAN DISCOURAGED ACTIVITY.—The term
5 ‘Iran discouraged activity’ means—

6 “(A) the sale of munitions to the Iranian
7 government,

8 “(B) loans aggregating more than \$20 mil-
9 lion to the Iranian government, or

10 “(C) investments of over \$20 million in the
11 Iranian energy sector.

12 “(2) IRANIAN GOVERNMENT.—The term ‘Ira-
13 nian government’ includes the government and any
14 agency thereof.

15 “(3) LOAN TO IRANIAN GOVERNMENT.—A loan
16 to the Iranian government includes any sale in which
17 payment is not due within 45 days of the transfer
18 of the goods or services sold, and also includes any
19 sale as to which the business entity does not take all
20 reasonable action to enforce payment when due.

21 “(4) INVESTMENT IN THE ENERGY SECTOR.—
22 Investment in the energy sector includes any invest-
23 ment with regards to nuclear facilities, gas pipelines,
24 natural gas, petroleum extraction or refinery facili-
25 ties, or transportation facilities.

1 “(e) DOING BUSINESS WITH TERRORISTS.—

2 “(1) IN GENERAL.—For purposes of this sec-
3 tion—

4 “(A) A business entity has engaged in Iran
5 discouraged activities if it conducts business
6 with or makes any charitable donation to any
7 Iranian person designated as a terrorist or to
8 any foreign terrorist organization.

9 “(B) A business entity has engaged in
10 Sudan discouraged activities if it conducts busi-
11 ness with or makes any charitable donation to
12 any Sudanese person designated as a terrorist
13 or to any foreign terrorist organization.

14 “(2) TERRORIST.—A person is designated as a
15 terrorist for purposes of paragraph (1) if such per-
16 son is designated or otherwise individually identified
17 in or pursuant to an Executive Order which is re-
18 lated to terrorism and issued under the authority of
19 the International Emergency Economic Powers Act
20 or section 5 of the United Nations Participation Act
21 of 1945 for the purpose of imposing on such organi-
22 zation an economic or other sanction.

23 “(3) FOREIGN TERRORIST ORGANIZATION.—
24 For purposes of paragraph (1), the term ‘foreign
25 terrorist organization’ means an organization des-

1 ignated under section 219 of the Immigration and
2 Nationality Act (8 U.S.C. 1189) as a foreign ter-
3 rorist organization.

4 “(f) IDENTIFICATION OF BUSINESS ENTITIES EN-
5 GAGING IN IRAN DISCOURAGED ACTIVITIES OR SUDAN
6 DISCOURAGED ACTIVITIES.—

7 “(1) PUBLICATION OF LIST.—For purposes of
8 this section, the Secretary shall publish and update
9 at least every six months a list of business entities
10 engaging in any Sudan discouraged activities or Iran
11 discouraged activities, or both.

12 “(2) REGULATIONS.—The Secretary shall issue
13 regulations defining how a business entity shall not
14 be deemed to be engaged in an Iran discouraged ac-
15 tivity or Sudan discouraged activity, if—

16 “(A) with regard to activities on the date
17 this section becomes effective, the business enti-
18 ty limits its activity to continuing existing con-
19 tracts, without extension or expansion (except
20 that an investment (as defined in section 14 of
21 the Iran Sanctions Act of 1996) that would
22 subject a business entity to sanctions under sec-
23 tion 5 of the Iran Sanctions Act of 1996 shall
24 be considered an Iran discouraged activity, not-

1 withstanding contracts entered into prior to the
2 effective date of this section), and

3 “(B) with regard to any Iran discouraged
4 activity or Sudan discouraged activity carried
5 on under contracts entered into or expanded
6 after the effective date of this section, the con-
7 tract was entered into at a time when the busi-
8 ness entity did not own or control the sub-
9 sidiary business entity, and after acquiring such
10 ownership or control the business entity has not
11 extended or expanded or renewed such contract.

12 “(3) TAXPAYER SELF-HELP.—Until such time
13 as the Secretary publishes a list of those engaging
14 in Iran discouraged activities or Sudan discouraged
15 activities or if the Secretary fails to update that list
16 as required in paragraph (1), the taxpayer may de-
17 termine, using his best knowledge and belief, which
18 business entities engage in an Iran discouraged ac-
19 tivity or a Sudan discouraged activity.

20 “(g) IMPROVEMENT IN THE ACTIONS OF THE GOV-
21 ERNMENT OF THE SUDAN.—Effective on the date when
22 the President certifies under a section 12 of the Sudan
23 Accountability and Divestment Act of 2007 (121 Stat.
24 2523), subsection (a) shall not apply to any Sudan dis-
25 couraged activity after such date.

1 “(h) IMPROVEMENT IN THE ACTIONS OF THE GOV-
2 ERNMENT OF IRAN.—

3 “(1) TERMINATION OF NONRECOGNITION
4 TREATMENT.—Effective on the date when the re-
5 quirements described in paragraph (2) are met, sub-
6 section (a) shall not apply to any Iran discouraged
7 activity after such date.

8 “(2) REQUIREMENTS.—The requirements de-
9 scribed in this paragraph are—

10 “(A) a declaration by the President which
11 states that, in the opinion of the President,
12 Iran is no longer engaging in efforts to develop
13 or retain weapons of mass destruction, and has
14 not developed and is not developing the capacity
15 to enrich or reprocess uranium or plutonium,
16 and

17 “(B) a determination by the Secretary of
18 State that Iran should no longer be listed as a
19 state sponsor of acts of international terrorism
20 pursuant to section 6(j) of the Export Adminis-
21 tration Act of 1979, section 620A of the For-
22 eign Assistance Act of 1961, section 40 of the
23 Arms Export Control Act, or any other provi-
24 sion of law.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
2 for part III of subchapter O of chapter 1 of such Code
3 is amended by adding at the end the following new item:

“Sec. 1046. Rollover of gain from divesting certain qualified securities of business entities engaged in discouraged activities in Iran or Sudan.”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to with respect to sales of securities
6 after the date of the enactment of this Act.

