114TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
114–15

PERMANENT S CORPORATION BUILT-IN GAIN RECOGNITION PERIOD ACT OF 2015

FEBRUARY 9, 2015.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RYAN of Wisconsin, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 629]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 629) to amend the Internal Revenue Code of 1986 to make permanent the reduced recognition period for built-in gains of S corporations, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

49–006

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Permanent S Corporation Built-in Gain Recognition Period Act of 2015".

SEC. 2. REDUCED RECOGNITION PERIOD FOR BUILT-IN GAINS OF S CORPORATIONS MADE PERMANENT.

(a) IN GENERAL.—Paragraph (7) of section 1374(d) of the Internal Revenue Code of 1986 is amended to read as follows:

"(7) RECOGNITION PERIOD.—

"(A) IN GENERAL.—The term 'recognition period' means the 5-year period beginning with the 1st day of the 1st taxable year for which the corporation was an S corporation. For purposes of applying this section to any amount includible in income by reason of distributions to shareholders pursuant to section 593(e), the preceding sentence shall be applied without regard to the phrase '5-year'.

"(B) INSTALLMENT SALES.—If an S corporation sells an asset and reports the income from the sale using the installment method under section 453, the treatment of all payments received shall be governed by the provisions of this paragraph applicable to the taxable year in which such sale was made.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2014.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

H.R. 629, reported by the Committee on Ways and Means, amends section 1374 of the Internal Revenue Code of 1986 ("the Code") to make permanent the five-year reduced recognition period for built-in gains of S corporations.

B. BACKGROUND AND NEED FOR LEGISLATION

H.R. 629, reported by the Committee on Ways and Means, provides a permanent five-year recognition period for built-in gains of an S corporation. A temporary provision, which expired for taxable years beginning after December 31, 2014, also provided a five-year recognition period for built-in gains of an S corporation. With the expiration of that temporary provision, however, that recognition period is currently ten years for taxable years beginning after December 31, 2014.

C. LEGISLATIVE HISTORY

Background

H.R. 629 was introduced on January 30, 2015, and was referred to the Committee on Ways and Means.

Committee action

The Committee on Ways and Means marked up H.R. 629, the Permanent S Corporation Built-in Gains Recogniton Period Act of 2015, on February 4, 2015, and ordered the bill, as amended, favorably reported (with a quorum being present).

Committee hearings

The need for a permanent five-year recognition period for built-in gains of S corporations was discussed at no fewer than four hearings during the 112th and 113th Congresses:

- Full Committee hearing on Fundamental Tax Reform (January 20, 2011);
- Full Committee hearing on the Treatment of Closely-Held Businesses in the Context of Tax Reform (March 7, 2012);
- Full Committee hearing on the Small Business and Pass-Through Entity Tax Reform Discussion Draft (May 15, 2013); and
- Full Committee hearing on the Benefits of Permanent Tax Policy for America's Job Creators (April 8, 2014).

II. EXPLANATION OF THE BILL

A. Reduced Recognition Period for Built-In Gains of S Corporations Made Permanent (sec. 1374 of the Code)

PRESENT LAW

In general

S corporations

A small business corporation[1] may elect to be treated as an S corporation. Unlike C corporations, S corporations generally pay no corporate-level tax. Instead, items of income and loss of an S corporation pass through to its shareholders. Each shareholder takes into account separately its share of these items on its own income tax return.[2]

A corporate level built-in gains tax, at the highest marginal rate applicable to corporations (currently 35 percent), is imposed on an S corporation's net recognized built-in gain[3] that arose prior to the conversion of the C corporation to an S corporation and is recognized by the S corporation during the recognition period, (i.e., the 10-year period beginning with the first day of the first taxable year for which the S election is in effect).[4] If the taxable income of the S corporation is less than the amount of net recognized built-in gain in the year such built-in gain is recognized (for example, because of post-conversion losses), no built-in gain tax is imposed on the excess of such built-in gain over taxable income for that year. However, the untaxed excess of net recognized built-in gain over taxable income for that year is treated as recognized built-in gain

[1] This term is defined in section 1361(b).

[2] Sec. 1366.

[3] Certain built-in income items are treated as recognized built-in gain for this purpose. Sec. 1374(d)(5).

[4] Sec. 1374(d)(7)(A). The 10-year period refers to ten calendar years from the first day of the first taxable year for which the corporation was an S corporation. Treas. Reg. sec. 1.1374–1(d).

in the succeeding taxable year.[5] Treasury regulations provide that if a corporation sells an asset before or during the recognition period and reports the income from the sale using the installment method[6] during or after the recognition period, that income is subject to the built-in gain tax.[7]

The built-in gain tax also applies to net recognized built-in gain attributable to any asset received by an S corporation from a C corporation in a transaction in which the S corporation's basis in the asset is determined (in whole or in part) by reference to the basis of such asset (or other property) in the hands of the C corporation.[8] In the case of such a transaction, the recognition period for any asset transferred by the C corporation starts on the date the asset was acquired by the S corporation in lieu of the beginning of the first taxable year for which the corporation was an S corporation.[9]

The amount of the built-in gains tax is treated as a loss by each of the S corporation shareholders in computing its own income tax.[10]

For any taxable year beginning in 2009 and 2010, no tax was imposed on the net recognized built-in gain of an S corporation under section 1374 if the seventh taxable year in the corporation's recognition period preceded such taxable year.[11] Thus, with respect to gain that arose prior to the conversion of a C corporation to an S corporation, no tax was imposed under section 1374 if the seventh taxable year that the S corporation election was in effect preceded the taxable year beginning in 2009 or 2010.

For any taxable year beginning in 2011, no tax was imposed on the net recognized built-in gain of an S corporation under section 1374 if the fifth year in the corporation's recognition period preceded such taxable year.[12] Thus, with respect to gain that arose prior to the conversion of a C corporation to an S corporation, no tax was imposed under section 1374 if the S corporation election was in effect for five years preceding the taxable year beginning in 2011.

For taxable years beginning in 2012, 2013, and 2014 the term "recognition period" in section 1374, for purposes of determining the net recognized built-in gain, is applied by substituting a five-year period[13] for the otherwise applicable 10-year period. Thus, for such taxable years, the recognition period is the five-year period beginning with the first day of the first taxable year for which the corporation was an S corporation (or beginning with the date of acquisition of assets if the rules applicable to assets acquired from a C corporation apply). If an S corporation with assets subject to section 1374 disposes of such assets in a taxable year beginning in 2012, 2013, or 2014 and the disposition occurs more than five years after the first day of the relevant recognition period, gain or loss

[5] Sec. 1374(d)(2).
[6] Sec. 453.
[7] Treas. Reg. sec. 1.1374–4(h).
[8] Sec. 1374(d)(8).
[9] Sec. 1374(d)(8)(B).
[10] Sec. 1366(f)(2). Shareholders continue to take into account all items of gain and loss under section 1366.
[11] Sec. 1374(d)(7)(B).
[12] Sec. 1374(d)(7)(C).
[13] The five-year period refers to five calendar years from the first day of the first taxable year for which the corporation was an S corporation.

on the disposition will not be taken into account in determining the net recognized built-in gain.

If an S corporation subject to section 1374 sells a built-in gain asset and reports the income from the sale using the installment method under section 453, the treatment of all payments received will be governed by the provisions of section 1374(d)(7) applicable to the taxable year in which the sale was made.

Application to real estate investment trusts and regulated investment companies

Under Treasury regulations, a regulated investment company ("RIC") or a real estate investment trust ("REIT") that was formerly a C corporation not taxed as a REIT or RIC (or that acquired assets from such a C corporation) generally is subject to the built-in gain tax rules as if the RIC or REIT were an S corporation, unless the relevant C corporation elects "deemed sale" treatment, requiring recognition of all C corporation built-in gain and loss at the time of the conversion or asset acquisition.[14] Deemed sale treatment is not permitted if its application would result in the recognition of a net loss.[15] For this purpose, net loss is the excess of aggregate losses over aggregate gains (including items of income), without regard to character.[16]

REASONS FOR CHANGE

The Committee believes that a five-year recognition period for built-in gains adequately protects the corporate tax base while allowing greater flexibility for S corporations to replace and reposition assets, allowing S corporations to access capital to expand business operations and create jobs. The Committee also believes that making the five-year recognition period permanent will provide needed certainty and removes a significant deterrent that often discourages C corporations from electing to be S corporations.

EXPLANATION OF PROVISION

The provision makes permanent the five-year recognition period for built-in gains of S corporations. Under current Treasury regulations, this five-year recognition period also will apply to real estate investment trusts and regulated investment companies that do not elect "deemed sale" treatment.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2014.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of H.R. 629, the Permanent S Corporation Built-in Gains Recognition Period Act of 2015.

---

[14] Treas. Reg. secs. 1.337(d)–7(a) and 1.337(d)–7(b).
[15] Treas. Reg. sec. 1.337(d)–7(c)(1).
[16] Treas. Reg. sec. 1.337(d)–7(c)(1).

The bill, H.R. 629, was ordered favorably reported as amended by a rollcall vote of 24 yeas to 14 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Ryan	X			Mr. Levin		X	
Mr. Johnson	X			Mr. Rangel		X	
Mr. Brady	X			Mr. McDermott		X	
Mr. Nunes	X			Mr. Lewis		X	
Mr. Tiberi	X			Mr. Neal		X	
Mr. Reichert	X			Mr. Becerra		X	
Mr. Boustany	X			Mr. Doggett		X	
Mr. Roskam	X			Mr. Thompson		X	
Mr. Price	X			Mr. Larson		X	
Mr. Buchanan	X			Mr. Blumenauer			
Mr. Smith (NE)	X			Mr. Kind		X	
Mr. Schock	X			Mr. Pascrell		X	
Ms. Jenkins	X			Mr. Crowley		X	
Mr. Paulsen	X			Mr. Davis		X	
Mr. Marchant	X			Ms. Sanchez		X	
Ms. Black	X						
Mr. Reed	X						
Mr. Young	X						
Mr. Kelly	X						
Mr. Renacci	X						
Mr. Meehan	X						
Ms. Noem	X						
Mr. Holding	X						
Mr. Smith (MO)	X						

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, H.R. 629, as reported.

The bill, as reported, is estimated to have the following effects on Federal budget receipts for fiscal years 2015–2025:

FISCAL YEARS

[Millions of Dollars]

2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2015–20	2015–25
−70	−218	−283	−222	−147	−103	−84	−81	−86	−92	−99	−1,043	−1,485

Note: Details do not add to totals due to rounding.

Pursuant to clause 8 of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: the gross budgetary effect (before incorporating macroeconomic effects) in any fiscal year is less than 0.25 percent of the current projected gross domestic product of the United States for that fiscal year; therefore, the bill is not "major legislation" for purposes of requiring that the estimate include the budgetary effects of changes in economic output, employment, capital stock and other macroeconomic variables.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee states further that the bill involves no new or increased tax expenditures.

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. Congress,
Congressional Budget Office,
Washington, DC, February 5, 2015.

Hon. Paul Ryan,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 629, the Permanent S Corporation Built-in Gains Recognition Period Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Nate Frentz.

Sincerely,

Douglas W. Elmendorf.

Enclosure.

H.R. 629—Permanent S Corporation Built-in Gains Recognition Period Act of 2015

H.R. 629 would amend the Internal Revenue Code to make permanent a five-year recognition period for built-in gains of S corporations, retroactive to January 1, 2015. Under current law, a corporation that meets certain requirements may elect to be taxed as an S corporation, which generally pays no corporate-level tax, unlike a C corporation. For corporations that convert from C corporations to S corporations, or S corporations that receive assets under certain conditions from C corporations, there is a corporate-level tax on certain built-in gains of certain assets, with a 10-year recognition period. This legislation would make permanent the five-year recognition period for S corporation built-in gains that was generally in effect for taxable years from 2011 through 2014. The legislation also would apply to regulated investment companies and real estate investment trusts.

The staff of the Joint Committee on Taxation (JCT) estimates that enacting H.R. 629 would reduce revenues, thus increasing federal deficits, by $1.5 billion over the 2015–2025 period.

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending and revenues. Enacting H.R. 629 would result in revenue losses in each year beginning in 2015. The estimated increases in the deficit are shown in the following table.

JCT has determined that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Nathaniel Frentz. The estimate was approved by David Weiner, Assistant Director for Tax Analysis.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 629, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON WAYS AND MEANS ON FEBRUARY 4, 2015

	By fiscal year, in millions of dollars 2015—												
	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2015–2020	2015–2025
	NET INCREASE IN THE DEFICIT												
Statutory Pay-As-You-Go Impact	70	218	283	222	147	103	84	81	86	92	99	1,043	1,485

Source: Staff of the Joint Committee on Taxation.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was as a result of the Committee's review of the provisions of H.R. 629 that the Committee concluded that it is appropriate to report the bill, as amended, favorably to the House of Representatives with the recommendation that the bill do pass.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. Applicability of House Rule XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the bill, and states that the bill does not involve any Federal income tax rate increases within the meaning of the rule.

E. Tax Complexity Analysis

Section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 (the "IRS Reform Act") requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Code and that have "widespread applicability” to individuals or small businesses, within the meaning of the rule.

F. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

G. Duplication of Federal Programs

In compliance with Sec. 3(g)(2) of H. Res. 5 (114th Congress), the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program, (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169).

H. Disclosure of Directed Rule Makings

In compliance with Sec. 3(i) of H. Res. 5 (114th Congress), the following statement is made concerning directed rule makings: The Committee estimates that the bill requires no directed rule makings within the meaning of such section.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

* * * * * * *

Subtitle A—Income Taxes

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * * * *

Subchapter S—Tax Treatment of S Corporations and Their Shareholders

* * * * * * *

PART III—SPECIAL RULES

* * * * * * *

SEC. 1374. TAX IMPOSED ON CERTAIN BUILT-IN GAINS.

(a) GENERAL RULE.—If for any taxable year beginning in the recognition period an S corporation has a net recognized built-in gain, there is hereby imposed a tax (computed under subsection (b)) on the income of such corporation for such taxable year.

(b) AMOUNT OF TAX.—

(1) IN GENERAL.—The amount of the tax imposed by subsection (a) shall be computed by applying the highest rate of tax specified in section 11(b) to the net recognized built-in gain of the S corporation for the taxable year.

(2) NET OPERATING LOSS CARRYFORWARDS FROM C YEARS ALLOWED.—Notwithstanding section 1371(b)(1), any net operating loss carryforward arising in a taxable year for which the corporation was a C corporation shall be allowed for purposes of this section as a deduction against the net recognized built-in gain of the S corporation for the taxable year. For purposes of determining the amount of any such loss which may be carried to subsequent taxable years, the amount of the net recognized built-in gain shall be treated as taxable income. Rules similar to the rules of the preceding sentences of this paragraph shall apply in the case of a capital loss carryforward arising in a taxable year for which the corporation was a C corporation.

(3) CREDITS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), no credit shall be allowable under part IV of subchapter A of this chapter (other than under section 34) against the tax imposed by subsection (a).

(B) BUSINESS CREDIT CARRYFORWARDS FROM C YEARS ALLOWED.—Notwithstanding section 1371(b)(1), any business credit carryforward under section 39 arising in a taxable year for which the corporation was a C corporation shall be allowed as a credit against the tax imposed by subsection (a) in the same manner as if it were imposed by section 11. A similar rule shall apply in the case of the minimum tax credit under section 53 to the extent attributable to taxable years for which the corporation was a C corporation.

(4) COORDINATION WITH SECTION 1201(A).—For purposes of section 1201(a)—

(A) the tax imposed by subsection (a) shall be treated as if it were imposed by section 11, and

(B) the amount of the net recognized built-in gain shall be treated as the taxable income.

(c) LIMITATIONS.—

(1) CORPORATIONS WHICH WERE ALWAYS S CORPORATIONS.—Subsection (a) shall not apply to any corporation if an election under section 1362(a) has been in effect with respect to such corporation for each of its taxable years. Except as provided in regulations, an S corporation and any predecessor corporation shall be treated as 1 corporation for purposes of the preceding sentence.

(2) LIMITATION ON AMOUNT OF RECOGNIZED BUILT-IN GAINS.—The amount of the net recognized built-in gain taken into account under this section for any taxable year shall not exceed the excess (if any) of—

(A) the net unrealized built-in gain, over

(B) the net recognized built-in gain for prior taxable years beginning in the recognition period.

(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) NET UNREALIZED BUILT-IN GAIN.—The term "net unrealized built-in gain" means the amount (if any) by which—

(A) the fair market value of the assets of the S corporation as of the beginning of its 1st taxable year for which an election under section 1362(a) is in effect, exceeds

(B) the aggregate adjusted bases of such assets at such time.

(2) NET RECOGNIZED BUILT-IN GAIN.—

(A) IN GENERAL.—The term "net recognized built-in gain" means, with respect to any taxable year in the recognition period, the lesser of—

(i) the amount which would be the taxable income of the S corporation for such taxable year if only recognized built-in gains and recognized built-in losses were taken into account, or

(ii) such corporation's taxable income for such taxable year (determined as provided in section 1375(b)(1)(B)).

(B) CARRYOVER.—If, for any taxable year described in subparagraph (A), the amount referred to in clause (i) of subparagraph (A) exceeds the amount referred to in clause (ii) of subparagraph (A), such excess shall be treated as a recognized built-in gain in the succeeding taxable year. The preceding sentence shall apply only in the case of a corporation treated as an S corporation by reason of an election made on or after March 31, 1988.

(3) RECOGNIZED BUILT-IN GAIN.—The term "recognized built-in gain" means any gain recognized during the recognition period on the disposition of any asset except to the extent that the S corporation establishes that—

(A) such asset was not held by the S corporation as of the beginning of the 1st taxable year for which it was an S corporation, or

(B) such gain exceeds the excess (if any) of—

(i) the fair market value of such asset as of the beginning of such 1st taxable year, over

(ii) the adjusted basis of the asset as of such time.

(4) RECOGNIZED BUILT-IN LOSSES.—The term "recognized built-in loss" means any loss recognized during the recognition period on the disposition of any asset to the extent that the S corporation establishes that—

(A) such asset was held by the S corporation as of the beginning of the 1st taxable year referred to in paragraph (3), and

(B) such loss does not exceed the excess of—

(i) the adjusted basis of such asset as of the beginning of such 1st taxable year, over

(ii) the fair market value of such asset as of such time.

(5) TREATMENT OF CERTAIN BUILT-IN ITEMS.—

(A) INCOME ITEMS.—Any item of income which is properly taken into account during the recognition period but which is attributable to periods before the 1st taxable year for which the corporation was an S corporation shall be treated as a recognized built-in gain for the taxable year in which it is properly taken into account.

(B) DEDUCTION ITEMS.—Any amount which is allowable as a deduction during the recognition period (determined without regard to any carryover) but which is attributable to periods before the 1st taxable year referred to in subparagraph (A) shall be treated as a recognized built-in loss for the taxable year for which it is allowable as a deduction.

(C) ADJUSTMENT TO NET UNREALIZED BUILT-IN GAIN.—The amount of the net unrealized built-in gain shall be properly adjusted for amounts which would be treated as recognized built-in gains or losses under this paragraph if such amounts were properly taken into account (or allowable as a deduction) during the recognition period.

(6) TREATMENT OF CERTAIN PROPERTY.—If the adjusted basis of any asset is determined (in whole or in part) by reference to the adjusted basis of any other asset held by the S corporation as of the beginning of the 1st taxable year referred to in paragraph (3)—

(A) such asset shall be treated as held by the S corporation as of the beginning of such 1st taxable year, and

(B) any determination under paragraph (3)(B) or (4)(B) with respect to such asset shall be made by reference to the fair market value and adjusted basis of such other asset as of the beginning of such 1st taxable year.

[(7) RECOGNITION PERIOD.—

[(A) IN GENERAL.—The term "recognition period" means the 10-year period beginning with the 1st day of the 1st taxable year for which the corporation was an S corporation.

[(B) SPECIAL RULES FOR 2009, 2010, AND 2011.—No tax shall be imposed on the net recognized built-in gain of an S corporation—

[(i) in the case of any taxable year beginning in 2009 or 2010, if the 7th taxable year in the recognition period preceded such taxable year, or

[(ii) in the case of any taxable year beginning in 2011, if the 5th year in the recognition period preceded such taxable year.

The preceding sentence shall be applied separately with respect to any asset to which paragraph (8) applies.

[(C) SPECIAL RULE FOR 2012, 2013, AND 2014.—For purposes of determining the net recognized built-in gain for taxable years beginning in 2012, 2013, or 2014, subparagraphs (A) and (D) shall be applied by substituting "5-year" for "10-year".

⟦(D) SPECIAL RULE FOR DISTRIBUTIONS TO SHAREHOLDERS.—For purposes of applying this section to any amount includible in income by reason of distributions to shareholders pursuant to section 593(e)—

⟦(i) subparagraph (A) shall be applied without regard to the phrase "10-year", and

⟦(ii) subparagraph (B) shall not apply.

⟦(E) INSTALLMENT SALES.—If an S corporation sells an asset and reports the income from the sale using the installment method under section 453, the treatment of all payments received shall be governed by the provisions of this paragraph applicable to the taxable year in which such sale was made.⟧

(7) RECOGNITION PERIOD.—

(A) IN GENERAL.—The term "recognition period" means the 5-year period beginning with the 1st day of the 1st taxable year for which the corporation was an S corporation. For purposes of applying this section to any amount includible in income by reason of distributions to shareholders pursuant to section 593(e), the preceding sentence shall be applied without regard to the phrase "5-year".

(B) INSTALLMENT SALES.—If an S corporation sells an asset and reports the income from the sale using the installment method under section 453, the treatment of all payments received shall be governed by the provisions of this paragraph applicable to the taxable year in which such sale was made.

(8) TREATMENT OF TRANSFER OF ASSETS FROM C CORPORATION TO S CORPORATION.—

(A) IN GENERAL.—Except to the extent provided in regulations, if—

(i) an S corporation acquires any asset, and

(ii) the S corporation's basis in such asset is determined (in whole or in part) by reference to the basis of such asset (or any other property) in the hands of a C corporation, then a tax is hereby imposed on any net recognized built-in gain attributable to any such assets for any taxable year beginning in the recognition period. The amount of such tax shall be determined under the rules of this section as modified by subparagraph (B).

(B) MODIFICATIONS.—For purposes of this paragraph, the modifications of this subparagraph are as follows:

(i) IN GENERAL.—The preceding paragraphs of this subsection shall be applied by taking into account the day on which the assets were acquired by the S corporation in lieu of the beginning of the 1st taxable year for which the corporation was an S corporation.

(ii) SUBSECTION (C)(1) NOT TO APPLY.—Subsection (c)(1) shall not apply.

(9) REFERENCE TO 1ST TAXABLE YEAR.—Any reference in this section to the 1st taxable year for which the corporation was an S corporation shall be treated as a reference to the 1st

taxable year for which the corporation was an S corporation pursuant to its most recent election under section 1362.

(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section including regulations providing for the appropriate treatment of successor corporations.

* * * * * * *

VII. DISSENTING VIEWS

The seven bills approved by the Republicans at the markup would add more than $93 billion to the deficit—and if history is our guide, this is merely the start of the approach the Republicans embraced last Congress. In the 113th Congress, Ways and Means Committee Republicans approved $825 billion worth of deficit-financed, permanent tax cuts. The bills marked up by the Committee set us down a partisan path, when we should be embracing bipartisanship and working in a responsible, bipartisan manner on tax reform.

Even though some of these bills were introduced individually with some bipartisan support, the opposition to these bills was based on the position that these tax provisions should not be made permanent by adding to the deficit without any revenue offset. Our nation's small businesses play a vital role in the economy. They are the backbone of our communities, creating jobs, economic growth, and harnessing the American entrepreneurial spirit—this is undeniable. Both the approach that the Committee Republicans are taking with respect to this and other important legislation undermines the bipartisan support that the provisions enjoy. The American people expect a tax code that maintains and supports our shared priorities, and each time the Committee considers these bills in a piecemeal approach, it is taking a step in the wrong direction and away from comprehensive tax reform.

We all support the small businesses in our communities and across the nation. The markup was not to debate the economic growth driven by small businesses, or the merits of H.R. 629, which would make permanent the reduced recognition period for built-in gains of S-corporations.

Finally, we also oppose the manner in which Republicans were proceeding—selecting seven provisions to make permanent at a cost of nearly $100 billion without an offset from the approximately 60 tax provisions that expired at the end of last year. This approach is both fiscally irresponsible and contrary to the goals of bipartisan, comprehensive tax reform.

Expired provisions must be dealt with in a comprehensive manner. The Republicans did not take up other tax extenders that also are important to Democratic Committee Members. Left to an uncertain fate are provisions like the Work Opportunity Tax Credit, the New Markets Tax Credit, and the renewable energy tax credits, as well as the long-term status of the Earned Income Tax Credit, the Child Tax Credit, and the American Opportunity Tax Credit.

SANDER M. LEVIN.

○