

107TH CONGRESS  
1ST SESSION

# H. R. 1303

To amend the Internal Revenue Code of 1986 to clarify the rules relating to lessee construction allowances and to contributions to the capital of retailers.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 2001

Ms. DUNN introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to clarify the rules relating to lessee construction allowances and to contributions to the capital of retailers.

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. EXCLUSION FROM GROSS INCOME OF QUALI-**  
4 **FIED LESSEE CONSTRUCTION ALLOWANCES**  
5 **NOT LIMITED TO SHORT-TERM LEASES.**

6 (a) IN GENERAL.—Subsection (a) of section 110 of  
7 the Internal Revenue Code of 1986 (relating to qualified  
8 lessee construction allowances for short term leases) is  
9 amended by striking the period at the end and inserting

1 “, and the amount expended meets the requirements of  
2 the expenditure rule. Paragraph (1) shall not apply if the  
3 lessee is a qualified retail business (as defined by section  
4 118(d)(3) without regard to the proximity requirement in  
5 subparagraph (A) thereof).”.

6 (b) EXPENDITURE RULE.—Section 110 of such Code  
7 is amended by redesignating subsections (b),(c), and (d)  
8 as subsections (c), (d), and (e), respectively, and by insert-  
9 ing after subsection (a) the following new subsection:

10 “(b) EXPENDITURE RULE.—An expenditure meets  
11 the requirements of this subsection if the expenditure oc-  
12 curs before the end of the second taxable year after such  
13 amount was received.”.

14 (c) CONFORMING AMENDMENTS.—

15 (1) The section heading for section 110 of such  
16 Code is amended by striking “**FOR SHORT-TERM**  
17 **LEASES**”.

18 (2) The item relating to section 110 in the table  
19 of sections for part III of subchapter B of chapter  
20 1 of such Code is amended by striking “for short-  
21 term leases”.

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

1 **SEC. 2. EXCLUSION FROM GROSS INCOME FOR CERTAIN**  
2 **CONTRIBUTIONS TO THE CAPITAL OF CER-**  
3 **TAIN RETAILERS.**

4 (a) IN GENERAL.—Section 118 of the Internal Rev-  
5 enue Code of 1986 (relating to contributions to the capital  
6 of a corporation) is amended by redesignating subsections  
7 (d) and (e) as subsections (e) and (f), respectively, and  
8 by inserting after subsection (e) the following new sub-  
9 section:

10 “(d) SAFE HARBOR FOR CONTRIBUTIONS TO CER-  
11 TAIN RETAILERS.—

12 “(1) GENERAL RULE.—For purposes of this  
13 section, the term ‘contribution to the capital of the  
14 taxpayer’ includes any amount of money or other  
15 property received by the taxpayer if—

16 “(A) the taxpayer has entered into an  
17 agreement to operate (or cause to be operated)  
18 a qualified retail business at a particular loca-  
19 tion for a period of at least 15 years,

20 “(B)(i) immediately after the receipt of  
21 such money or other property, the taxpayer  
22 owns the land and the structure to be used by  
23 the taxpayer in carrying on a qualified retail  
24 business at such location, or

1           “(ii) the taxpayer uses such amount to ac-  
2           quire ownership of at least such land and struc-  
3           ture,

4           “(C) such amount meets the requirements  
5           of the expenditure rule of paragraph (2), and

6           “(D) the contributor of such amount does  
7           not hold a beneficial interest in any property lo-  
8           cated on the premises of such qualified retail  
9           business other than de minimis amounts of  
10          property associated with the operation of prop-  
11          erty adjacent to such premises.

12          “(2) EXPENDITURE RULE.—An amount meets  
13          the requirements of this paragraph if—

14               “(A) an amount equal to such amount is  
15               expended for the acquisition of land or for ac-  
16               quisition or construction of other property de-  
17               scribed in section 1231(b)—

18                       “(i) which was the purpose motivating  
19                       the contribution, and

20                       “(ii) which is used predominantly in a  
21                       qualified retail business at the location re-  
22                       ferred to in paragraph (1)(A),

23               “(B) the expenditure referred to in sub-  
24          paragraph (A) occurs before the end of the sec-

1           ond taxable year after the year in which such  
2           amount was received, and

3           “(C) accurate records are kept of the  
4           amounts contributed and expenditures made on  
5           the basis of the project for which the contribu-  
6           tion was made and on the basis of the year of  
7           the contribution expenditure.

8           “(3) DEFINITION OF QUALIFIED RETAIL BUSI-  
9           NESS.—

10           “(A) IN GENERAL.—Except as provided in  
11           subparagraph (B), the term ‘qualified retail  
12           business’ means a trade or business of selling  
13           tangible personal property to the general public  
14           if the premises on which such trade or business  
15           is conducted is in close proximity to property  
16           that the contributor of the amount referred to  
17           in paragraph (1) is developing or operating for  
18           profit (or, in the case of a contributor which is  
19           a governmental entity, is attempting to revi-  
20           talize).

21           “(B) SERVICES.—A trade or business shall  
22           not fail to be treated as a qualified retail busi-  
23           ness by reason of sales of services if such sales  
24           are incident to the sale of tangible personal

1 property or if the services are de minimis in  
2 amount.

3 “(4) SPECIAL RULES.—

4 “(A) LEASES.—For purposes of paragraph  
5 (1), property shall be treated as owned by the  
6 taxpayer if the taxpayer is the lessee of such  
7 property under a lease having a term of at least  
8 30 years and on which only nominal rent is re-  
9 quired.

10 “(B) CONTROLLED GROUPS.—For pur-  
11 poses of this subsection, all persons treated as  
12 a single employer under subsection (a) or (b) of  
13 section 52 shall be treated as one person.

14 “(5) DISALLOWANCE OF DEDUCTIONS AND  
15 CREDITS; ADJUSTED BASIS.—Notwithstanding any  
16 other provision of this subtitle, no deduction or cred-  
17 it shall be allowed for, or by reason of, any amount  
18 received by the taxpayer which constitutes a con-  
19 tribution to capital to which this subsection applies.  
20 The adjusted basis of any property acquired with the  
21 contributions to which this subsection applies shall  
22 be reduced by the amount of the contributions to  
23 which this subsection applies.

24 “(6) REGULATIONS.—The Secretary shall pre-  
25 scribe such regulations are appropriate to prevent

1 the abuse of the purposes of the subsection, includ-  
2 ing regulations which allocate income and deductions  
3 (or adjust the amount excludable under this sub-  
4 section) in cases in which—

5 “(A) payments in excess of fair market  
6 value are paid to the contributor by the tax-  
7 payer, or

8 “(B) the contributor and the taxpayer are  
9 related parties.”.

10 (b) CONFORMING AMENDMENT.—Subsection (e) of  
11 section 118 of such Code (as redesignated by subsection  
12 (a)) is amended by adding at the end the following flush  
13 sentence:

14 “Rules similar to the rules of the preceding sentence shall  
15 apply to any amount treated as a contribution to the cap-  
16 ital of the taxpayer under subsection (d).”.

17 (c) EFFECTIVE DATE.—The amendments made by  
18 this section shall apply to amounts received after the date  
19 of the enactment of this Act.

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