

112TH CONGRESS
1ST SESSION

H. R. 1147

To amend the Internal Revenue Code of 1986 to allow a deduction for certain payments made to reduce debt on commercial real property.

IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 2011

Mr. NUNES (for himself and Ms. BERKLEY) 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 certain payments made to reduce debt on commercial real property.

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 “Community Recovery
5 and Enhancement Act of 2011” or the “CRE Act of
6 2011”.

1 **SEC. 2. DEDUCTION FOR CERTAIN PAYMENTS MADE RE-**
2 **DUCE DEBT ON COMMERCIAL REAL PROP-**
3 **ERTY.**

4 (a) IN GENERAL.—Part VI of subchapter B of chap-
5 ter 1 of the Internal Revenue Code of 1986 (relating to
6 additional itemized deductions for individuals and corpora-
7 tions) is amended by adding at the end the following new
8 section:

9 **“SEC. 199A. DEDUCTION FOR PAYMENTS MADE TO REDUCE**
10 **DEBT ON COMMERCIAL REAL PROPERTY.**

11 “(a) IN GENERAL.—There shall be allowed as a de-
12 duction an amount equal to 50 percent of any qualified
13 debt reduction payment made during the taxable year by
14 the taxpayer with respect to qualified indebtedness on eli-
15 gible commercial real property held by the taxpayer.

16 “(b) MAXIMUM DEDUCTION.—The deduction allowed
17 by subsection (a) for any taxable year shall not exceed,
18 with respect to each eligible commercial real property,
19 whichever of the following amounts is the least:

20 “(1) The amount equal to 50 percent of the ex-
21 cess (if any) of—

22 “(A) the amount of the qualified indebted-
23 ness secured by such property as of the begin-
24 ning of such taxable year (reduced by amounts
25 required to be paid under the terms of the loan
26 during such taxable year), over

1 “(B) 50 percent of the fair market value of
2 such property as of the close of the taxable
3 year.

4 “(2) \$10,000,000.

5 “(3) The adjusted basis of such property as of
6 the close of such taxable year (determined without
7 regard to qualified debt reduction payments made
8 during the taxable year and depreciation for such
9 year).

10 “(c) ELIGIBLE COMMERCIAL REAL PROPERTY.—For
11 purposes of this section, the term ‘eligible commercial real
12 property’ means any commercial real property if—

13 “(1) as of the beginning of the taxable year, the
14 amount of the qualified indebtedness secured by
15 such property is at least equal to 85 percent of the
16 fair market value of the property, or

17 “(2) such property is, or is reasonably expected
18 to be, treated as being in an in-substance foreclosure
19 by the Comptroller of the Currency.

20 “(d) QUALIFIED DEBT REDUCTION PAYMENT.—For
21 purposes of this section, the term ‘qualified debt reduction
22 payment’ means the amount of cash paid by the taxpayer
23 during the taxable year to reduce the principal amount
24 of qualified indebtedness of the taxpayer but only to the

1 extent such amount exceeds the amounts required to be
2 paid under the terms of the loan during such taxable year.

3 “(e) PROPERTY HELD BY A PARTNERSHIP.—

4 “(1) IN GENERAL.—In the case of property
5 held by a partnership, a qualified debt reduction
6 payment by the partnership may be taken into ac-
7 count under this section only if—

8 “(A) such payment is attributable to a
9 qualified equity investment made by a partner
10 in such partnership, and

11 “(B) any deduction under this section
12 which is attributable to such investment is
13 properly allocated to such partner under section
14 704(b).

15 “(2) QUALIFIED EQUITY INVESTMENT.—For
16 purposes of this section—

17 “(A) IN GENERAL.—The term ‘qualified
18 equity investment’ means any equity investment
19 (as defined in section 45D(b)(6)) in a partner-
20 ship if—

21 “(i) such investment is acquired by
22 the partner at its original issue (directly or
23 through an underwriter) solely in exchange
24 for cash,

1 “(ii) at least 80 percent of such cash
2 is used by the partnership to reduce the
3 principal amount of qualified indebtedness
4 of the partnership,

5 “(iii) the portion of such cash not so
6 used is used by the partnership for im-
7 provements to commercial real property
8 held by the partnership, and

9 “(iv) the person or persons otherwise
10 entitled to depreciation with respect to the
11 portion of the basis of the property being
12 reduced under subsection (g)(1) consent to
13 such reduction.

14 “(B) REDEMPTIONS.—A rule similar to
15 the rule of section 1202(c)(3) shall apply for
16 purposes of this paragraph.

17 “(f) OTHER DEFINITIONS.—For purposes of this sec-
18 tion—

19 “(1) QUALIFIED INDEBTEDNESS.—The term
20 ‘qualified indebtedness’ means any indebtedness—

21 “(A) which is incurred or assumed by the
22 taxpayer on or before January 1, 2009, and

23 “(B) which is secured by commercial real
24 property held by the taxpayer at the time the

1 qualified debt reduction equity payment is made
2 by the taxpayer.

3 “(2) COMMERCIAL REAL PROPERTY.—The term
4 ‘commercial real property’ means section 1250 prop-
5 erty (as defined in section 1250(c)); except that such
6 term shall not include residential rental property (as
7 defined in section 168(e)(2)) unless the building con-
8 tains at least 3 dwelling units.

9 “(g) APPLICATION OF SECTION 1250.—For purposes
10 of determining the depreciation adjustments under section
11 1250 with respect to any property—

12 “(1) the deduction allowed by this section shall
13 be treated as a deduction for depreciation, and

14 “(2) the depreciation adjustments in respect of
15 such property shall include all deductions allowed by
16 this section to all taxpayers by reason of reducing
17 the debt secured by such property.

18 “(h) SPECIAL RULES.—

19 “(1) BASIS REDUCTION.—The basis of any
20 property with respect to which any qualified debt re-
21 duction payment is made shall be reduced by the
22 amount of the deduction allowed by this section by
23 reason of such payment.

24 “(2) REFINANCINGS.—The indebtedness de-
25 scribed in subsection (f)(1)(A) shall include indebt-

1 edness resulting from the refinancing of indebted-
2 ness described in such subsection (or this sentence),
3 but only to the extent it does not exceed the amount
4 of the indebtedness being refinanced.

5 “(3) DENIAL OF DEDUCTION FOR DEBT-FI-
6 NANCED PAYMENTS.—No deduction shall be allowed
7 by this section for any qualified debt reduction pay-
8 ment—

9 “(A) to the extent indebtedness is incurred
10 or continued by the taxpayer to make such pay-
11 ment, and

12 “(B) in the case of a qualified debt reduc-
13 tion payment made by a partnership on quali-
14 fied indebtedness on commercial real property
15 held by the partnership, to the extent of indebt-
16 edness—

17 “(i) which is incurred or continued by
18 any partner to whom such payment is allo-
19 cable, and

20 “(ii) which is secured by such part-
21 ner’s interest in the partnership or by such
22 commercial real property.

23 “(4) TREATMENT OF AMOUNTS REQUIRED TO
24 BE PAID BY REASON OF LOAN DEFAULT.—For pur-
25 poses of subsections (b)(1)(A) and (d), accelerated

1 payments required to be made under the terms of a
2 loan solely by reason of a default on the loan shall
3 not be taken into account.

4 “(5) RECAPTURE OF DEDUCTION IF ADDI-
5 TIONAL DEBT WITHIN 3 YEARS.—

6 “(A) IN GENERAL.—If a taxpayer incurs
7 any additional debt within 3 years after the
8 date that the taxpayer made a qualified debt re-
9 duction payment, the ordinary income of the
10 taxpayer making such payment shall be in-
11 creased by the applicable percentage of the re-
12 captured deduction.

13 “(B) RECAPTURED DEDUCTION.—For
14 purposed of this paragraph, the recaptured de-
15 duction is the excess of—

16 “(i) the deduction allowed by sub-
17 section (a) on account of a qualified debt
18 reduction payment, over

19 “(ii) the deduction which would have
20 been so allowed if such payment had been
21 reduced by the additional debt.

22 “(C) APPLICABLE PERCENTAGE.—The ap-
23 plicable percentage shall be determined in ac-
24 cordance with the following table:

“If, of the 3 years referred to in subparagraph (A), the additional debt occurs during the:	The applicable percentage is:
1st such year	100
2d such year	66 2/3
3d such year	33 1/3.

1 “(D) PARTNERSHIPS.—

2 “(i) ALLOCATION OF INCOME INCLU-

3 SION.—Any increase in the ordinary in-

4 come of a partnership by reason of this

5 paragraph shall be allocated (under regula-

6 tions prescribed by the Secretary) among

7 the partners receiving a deduction under

8 this section by reason of making qualified

9 equity investments in the partnership.

10 “(ii) DEBT-FINANCED EQUITY IN-

11 VESTMENT BY PARTNER.—Rules similar to

12 the rules of the paragraph shall apply in

13 cases where additional debt is incurred by

14 a partner making a qualified equity invest-

15 ment in a partnership.

16 “(E) SUBSEQUENT DEPRECIATION.—The

17 deductions under section 168 for periods after

18 a recaptured deduction under this paragraph

19 shall be determined as if the portion of the

20 qualified debt reduction payment allocable to

21 the recaptured deduction had never been made.

1 “(6) RECAPTURE WHERE PARTNER DISPOSES
2 OF INTEREST IN PARTNERSHIP.—If any partner to
3 whom a deduction under this section is allocable by
4 reason of making a qualified equity investment in a
5 partnership disposes of any portion of such partner’s
6 interest in the partnership within 1 year after the
7 date such investment was made, the ordinary income
8 of such partner shall be increased by the amount
9 which bears the same ratio to the deduction allowed
10 on account of such investment as such portion bears
11 to such partner’s interest in the partnership imme-
12 diately before such disposition.

13 “(7) EXEMPTION FROM PASSIVE LOSS
14 RULES.—Section 469 shall not apply to the deduc-
15 tion allowed by this section.

16 “(i) APPLICATION OF SECTION.—This section shall
17 apply to qualified debt reduction payments made within
18 the 2-year period beginning on the day after the date of
19 the enactment of this section.”.

20 (b) EARNINGS AND PROFITS.—Subsection (k) of sec-
21 tion 312 of such Code is amended by adding at the end
22 the following new paragraph:

23 “(6) TREATMENT OF SECTION 199A.—Para-
24 graphs (1) and (3) shall not apply to the deduction
25 allowed by section 199A.”.

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

“Sec. 199A. Deduction for payments made to reduce debt on commercial real
property.”.

4 (d) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to taxable years ending after the
6 date of the enactment of this Act.

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