

118TH CONGRESS  
1ST SESSION

# H. R. 5176

To amend the Internal Revenue Code of 1986 to allow for nonrecognition of gain on real property sold for use as affordable housing.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 8, 2023

Mr. SCHIFF (for himself and Mr. PETERS) 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 allow for nonrecognition of gain on real property sold for use as affordable housing.

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 “Affordable and Home-  
5 less Housing Incentives Act of 2023”.

6 **SEC. 2. NONRECOGNITION OF GAIN ON PROPERTY SOLD**  
7 **FOR USE AS AFFORDABLE HOUSING.**

8 (a) IN GENERAL.—Section 1033 of the Internal Rev-  
9 enue Code of 1986 is amended by redesignating subsection

1 (k) as subsection (l) and by inserting after subsection (j)  
2 the following new subsection:

3 “(k) SALES FOR USE AS AFFORDABLE HOUSING.—

4 “(1) IN GENERAL.—For purposes of this sub-  
5 title, if real property is sold or otherwise transferred  
6 to a qualified housing operator for use or develop-  
7 ment by such operator as affordable housing and  
8 such property meets the requirements of paragraphs  
9 (3) and (4), such sale or transfer shall be treated as  
10 an involuntary conversion to which this section ap-  
11 plies.

12 “(2) QUALIFIED HOUSING OPERATOR.—For  
13 purposes of this section, the term ‘qualified housing  
14 operator’ means any of the following:

15 “(A) A State or local government, or any  
16 political subdivision or instrumentality thereof.

17 “(B) A tribally designated housing entity  
18 (as such term is defined in section 4 of the Na-  
19 tive American Housing Assistance and Self-De-  
20 termination Act of 1996).

21 “(C) A community housing development  
22 organization (as such term is defined in section  
23 104 of the Cranston-Gonzalez National Afford-  
24 able Housing Act).

25 “(D) An organization—

1 “(i) described in section 501(e) and  
2 exempt from taxation under section  
3 501(a),

4 “(ii) the purpose of which includes  
5 providing affordable housing, and

6 “(iii) which—

7 “(I) has received Federal, State,  
8 or local grant funds to develop or op-  
9 erate affordable housing, or

10 “(II) is described in section  
11 42(h)(5)(B) with respect to a quali-  
12 fied low-income housing project that is  
13 allocated housing credit dollar  
14 amounts under section 42.

15 “(3) AFFORDABLE HOUSING REQUIREMENT.—

16 The requirements of this paragraph are met with re-  
17 spect to property if such property has, as of the date  
18 of the sale or transfer referred to in paragraph (1),  
19 a covenant or other binding legal restriction suffi-  
20 cient to—

21 “(A) obligate, at all times during the 30-  
22 year period beginning on such date, each owner  
23 of such property with respect to the portion of  
24 such period during which such owner owns such  
25 property, to maintain such property as either—

1           “(i) residential rental property (within  
2           the meaning of section 168) not less than  
3           75 percent of the units of which are af-  
4           fordable to low-income families and either  
5           occupied by or available for use by low-in-  
6           come residents, or

7           “(ii) a shelter eligible for assistance  
8           under title IV of the McKinney-Vento  
9           Homeless Assistance Act, and

10          “(B) provide any person a right to obtain  
11          injunctive relief to enforce the obligations de-  
12          scribed in subparagraph (A).

13          “(4) NOTIFICATION OF DEPARTMENT OF HOUS-  
14          ING AND URBAN DEVELOPMENT.—The requirements  
15          of this paragraph are met with respect to any prop-  
16          erty if, not later than 90 days after the date of the  
17          sale or transfer referred to in paragraph (1), the  
18          transferor notifies the Secretary of Housing and  
19          Urban Development of such transfer in such manner  
20          as such Secretary may provide.

21          “(5) SPECIAL RULE WITH RESPECT TO PERIOD  
22          WITHIN WHICH PROPERTY MUST BE REPLACED.—In  
23          the case of a sale or transfer described in paragraph  
24          (1), subsection (a)(2)(B)(i) shall be applied by sub-  
25          stituting ‘3 years’ for ‘2 years’.

1           “(6) SPECIAL RULE FOR REAL PROPERTY HELD  
2           FOR PRODUCTIVE USE IN TRADE OR BUSINESS.—  
3           For purposes of subsection (a), if the real property  
4           described in paragraph (1) is held for productive use  
5           in a trade or business or for investment, property of  
6           a like kind to be held either for productive use in a  
7           trade or business or for investment shall be treated  
8           as property similar or related in service or use to the  
9           property so described.”.

10          (b) ENFORCEMENT OBLIGATIONS OF THE DEPART-  
11          MENT OF HOUSING AND URBAN DEVELOPMENT.—With  
12          respect to each property with respect to which the Sec-  
13          retary of Housing and Urban Development receives notifi-  
14          cation under paragraph (4) of section 1033(k) of the In-  
15          ternal Revenue Code of 1986, such Secretary, acting  
16          through the Departmental Enforcement Center (DEC) of  
17          the Department of Housing and Urban Development, shall  
18          ensure (not less often than every 5 years during the 30-  
19          year period described in paragraph (3)(A) of such section)  
20          that such property complies with the requirements of such  
21          paragraph (3)(A), including if necessary by obtaining the  
22          injunctive relief described in paragraph (3)(B) of such sec-  
23          tion.

1       (c) EFFECTIVE DATE.—The amendment made by  
2 this section shall apply to sales and transfers after the  
3 date of the enactment of this Act.

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