

104TH CONGRESS
1ST SESSION

S. 700

To amend the Internal Revenue Code of 1986 to revise the tax rules on expatriation, to modify the basis rules for nonresident aliens becoming citizens or residents, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 6 (legislative day, APRIL 5), 1995

Mr. MOYNIHAN (for himself, Mr. BRADLEY, Mr. CONRAD, and Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to revise the tax rules on expatriation, to modify the basis rules for nonresident aliens becoming citizens or residents, and for other purposes.

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. REVISION OF TAX RULES ON EXPATRIATION.**

4 (a) IN GENERAL.—Subpart A of part II of sub-
5 chapter N of chapter 1 of the Internal Revenue Code of
6 1986 is amended by inserting after section 877 the follow-
7 ing new section:

1 **“SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.**

2 “(a) GENERAL RULES.—For purposes of this sub-
3 title—

4 “(1) MARK TO MARKET.—Except as provided in
5 subsection (f)(2), all property held by an expatriate
6 immediately before the expatriation date shall be
7 treated as sold at such time for its fair market
8 value.

9 “(2) RECOGNITION OF GAIN OR LOSS.—In the
10 case of any sale under paragraph (1)—

11 “(A) notwithstanding any other provision
12 of this title, any gain arising from such sale
13 shall be taken into account for the taxable year
14 of the sale unless such gain is excluded from
15 gross income under part III of subchapter B,
16 and

17 “(B) any loss arising from such sale shall
18 be taken into account for the taxable year of
19 the sale to the extent otherwise provided by this
20 title, except that section 1091 shall not apply
21 (and section 1092 shall apply) to any such loss.

22 “(3) ELECTION TO CONTINUE TO BE TAXED AS
23 UNITED STATES CITIZEN.—

24 “(A) IN GENERAL.—If an expatriate elects
25 the application of this paragraph with respect
26 to any property—

1 “(i) this section (other than this para-
2 graph) shall not apply to such property,
3 but

4 “(ii) such property shall be subject to
5 tax under this title in the same manner as
6 if the individual were a United States citi-
7 zen.

8 “(B) LIMITATION ON AMOUNT OF ESTATE,
9 GIFT, AND GENERATION-SKIPPING TRANSFER
10 TAXES.—The aggregate amount of taxes im-
11 posed under subtitle B with respect to any
12 transfer of property by reason of an election
13 under subparagraph (A) shall not exceed the
14 amount of income tax which would be due if the
15 property were sold for its fair market value im-
16 mediately before the time of the transfer or
17 death (taking into account the rules of sub-
18 section (a)(2)).

19 “(C) REQUIREMENTS.—Subparagraph (A)
20 shall not apply to an individual unless the indi-
21 vidual—

22 “(i) provides security for payment of
23 tax in such form and manner, and in such
24 amount, as the Secretary may require,

1 “(ii) consents to the waiver of any
2 right of the individual under any treaty of
3 the United States which would preclude as-
4 sessment or collection of any tax which
5 may be imposed by reason of this para-
6 graph, and

7 “(iii) complies with such other re-
8 quirements as the Secretary may prescribe.

9 “(D) ELECTION.—An election under sub-
10 paragraph (A) shall apply only to the property
11 described in the election and, once made, shall
12 be irrevocable.

13 “(b) EXCLUSION FOR CERTAIN GAIN.—The amount
14 which would (but for this subsection) be includible in the
15 gross income of any individual by reason of subsection (a)
16 shall be reduced (but not below zero) by \$600,000.

17 “(c) PROPERTY TREATED AS HELD.—For purposes
18 of this section, except as otherwise provided by the Sec-
19 retary, an individual shall be treated as holding—

20 “(1) all property which would be includible in
21 his gross estate under chapter 11 if such individual
22 were a citizen or resident of the United States (with-
23 in the meaning of chapter 11) who died at the time
24 the property is treated as sold,

1 “(2) any other interest in a trust which the in-
2 dividual is treated as holding under the rules of sub-
3 section (f)(1), and

4 “(3) any other interest in property specified by
5 the Secretary as necessary or appropriate to carry
6 out the purposes of this section.

7 “(d) EXCEPTIONS.—The following property shall not
8 be treated as sold for purposes of this section:

9 “(1) UNITED STATES REAL PROPERTY INTER-
10 ESTS.—Any United States real property interest (as
11 defined in section 897(c)(1)), other than stock of a
12 United States real property holding corporation
13 which does not, on the expatriation date, meet the
14 requirements of section 897(c)(2).

15 “(2) INTEREST IN CERTAIN RETIREMENT
16 PLANS.—

17 “(A) IN GENERAL.—Any interest in a
18 qualified retirement plan (as defined in section
19 4974(c)), other than any interest attributable to
20 contributions which are in excess of any limita-
21 tion or which violate any condition for tax-
22 favored treatment.

23 “(B) FOREIGN PENSION PLANS.—

24 “(i) IN GENERAL.—Under regulations
25 prescribed by the Secretary, interests in

1 foreign pension plans or similar retirement
2 arrangements or programs.

3 “(ii) LIMITATION.—The value of prop-
4 erty which is treated as not sold by reason
5 of this subparagraph shall not exceed
6 \$500,000.

7 “(e) DEFINITIONS.—For purposes of this section—

8 “(1) EXPATRIATE.—The term ‘expatriate’
9 means—

10 “(A) any United States citizen who relin-
11 quishes his citizenship, or

12 “(B) any long-term resident of the United
13 States who—

14 “(i) ceases to be a lawful permanent
15 resident of the United States (within the
16 meaning of section 7701(b)(6)), or

17 “(ii) commences to be treated as a
18 resident of a foreign country under the
19 provisions of a tax treaty between the
20 United States and the foreign country and
21 who does not waive the benefits of such
22 treaty applicable to residents of the foreign
23 country.

24 An individual shall not be treated as an expatriate
25 for purposes of this section by reason of the individ-

1 ual relinquishing United States citizenship before at-
2 taining the age of 18½ if the individual has been a
3 resident of the United States (as defined in section
4 7701(b)(1)(A)(ii)) for less than 5 taxable years be-
5 fore the date of relinquishment.

6 “(2) EXPATRIATION DATE.—The term ‘expa-
7 triation date’ means—

8 “(A) the date an individual relinquishes
9 United States citizenship, or

10 “(B) in the case of a long-term resident of
11 the United States, the date of the event de-
12 scribed in clause (i) or (ii) of paragraph (1)(B).

13 “(3) RELINQUISHMENT OF CITIZENSHIP.—A
14 citizen shall be treated as relinquishing his United
15 States citizenship on the earliest of—

16 “(A) the date the individual renounces his
17 United States nationality before a diplomatic or
18 consular officer of the United States pursuant
19 to paragraph (5) of section 349(a) of the Immi-
20 gration and Nationality Act (8 U.S.C.
21 1481(a)(5)),

22 “(B) the date the individual furnishes to
23 the United States Department of State a signed
24 statement of voluntary relinquishment of Unit-
25 ed States nationality confirming the perform-

1 ance of an act of expatriation specified in para-
2 graph (1), (2), (3), or (4) of section 349(a) of
3 the Immigration and Nationality Act (8 U.S.C.
4 1481(a)(1)–(4)),

5 “(C) the date the United States Depart-
6 ment of State issues to the individual a certifi-
7 cate of loss of nationality, or

8 “(D) the date a court of the United States
9 cancels a naturalized citizen’s certificate of nat-
10 uralization.

11 Subparagraph (A) or (B) shall not apply to any indi-
12 vidual unless the renunciation or voluntary relin-
13 quishment is subsequently approved by the issuance
14 to the individual of a certificate of loss of nationality
15 by the United States Department of State.

16 “(4) LONG-TERM RESIDENT.—

17 “(A) IN GENERAL.—The term ‘long-term
18 resident’ means any individual (other than a
19 citizen of the United States) who is a lawful
20 permanent resident of the United States in at
21 least 8 taxable years during the period of 15
22 taxable years ending with the taxable year dur-
23 ing which the sale under subsection (a)(1) is
24 treated as occurring. For purposes of the pre-
25 ceding sentence, an individual shall not be

1 treated as a lawful permanent resident for any
2 taxable year if such individual is treated as a
3 resident of a foreign country for the taxable
4 year under the provisions of a tax treaty be-
5 tween the United States and the foreign coun-
6 try and does not waive the benefits of such
7 treaty applicable to residents of the foreign
8 country.

9 “(B) SPECIAL RULE.—For purposes of
10 subparagraph (A), there shall not be taken into
11 account—

12 “(i) any taxable year during which
13 any prior sale is treated under subsection
14 (a)(1) as occurring, or

15 “(ii) any taxable year prior to the tax-
16 able year referred to in clause (i).

17 “(f) SPECIAL RULES APPLICABLE TO BENE-
18 FICIARIES’ INTERESTS IN TRUST.—

19 “(1) DETERMINATION OF BENEFICIARIES’ IN-
20 TEREST IN TRUST.—For purposes of this section—

21 “(A) GENERAL RULE.—A beneficiary’s in-
22 terest in a trust shall be based upon all relevant
23 facts and circumstances, including the terms of
24 the trust instrument and any letter of wishes or
25 similar document, historical patterns of trust

1 distributions, and the existence of and functions
2 performed by a trust protector or any similar
3 advisor.

4 “(B) SPECIAL RULE.—The remaining in-
5 terests in the trust not determined under sub-
6 paragraph (A) to be held by any beneficiary
7 shall be allocated first to the grantor, if a bene-
8 ficiary, and then to other beneficiaries under
9 rules prescribed by the Secretary similar to the
10 rules of intestate succession.

11 “(C) CONSTRUCTIVE OWNERSHIP.—If a
12 beneficiary of a trust is a corporation, partner-
13 ship, trust, or estate, the shareholders, part-
14 ners, or beneficiaries shall be deemed to be the
15 trust beneficiaries for purposes of this section.

16 “(D) TAXPAYER RETURN POSITION.—A
17 taxpayer shall clearly indicate on its income tax
18 return—

19 “(i) the methodology used to deter-
20 mine that taxpayer’s trust interest under
21 this section, and

22 “(ii) if the taxpayer knows (or has
23 reason to know) that any other beneficiary
24 of such trust is using a different methodol-

1 ogy to determine such beneficiary's trust
2 interest under this section.

3 “(2) DEEMED SALE IN CASE OF TRUST INTER-
4 EST.—If an individual who is an expatriate is treat-
5 ed under paragraph (1) as holding an interest in a
6 trust for purposes of this section—

7 “(A) the individual shall not be treated as
8 having sold such interest,

9 “(B) such interest shall be treated as a
10 separate share in the trust, and

11 “(C)(i) such separate share shall be treat-
12 ed as a separate trust consisting of the assets
13 allocable to such share,

14 “(ii) the separate trust shall be treated as
15 having sold its assets immediately before the ex-
16 patriation date for their fair market value and
17 as having distributed all of its assets to the in-
18 dividual as of such time, and

19 “(iii) the individual shall be treated as hav-
20 ing recontributed the assets to the separate
21 trust.

22 Subsection (a)(2) shall apply to any income, gain, or
23 loss of the individual arising from a distribution de-
24 scribed in subparagraph (C)(ii).

1 “(g) TERMINATION OF DEFERRALS, ETC.—On the
2 date any property held by an individual is treated as sold
3 under subsection (a), notwithstanding any other provision
4 of this title—

5 “(1) any period during which recognition of in-
6 come or gain is deferred shall terminate, and

7 “(2) any extension of time for payment of tax
8 shall cease to apply and the unpaid portion of such
9 tax shall be due and payable at the time and in the
10 manner prescribed by the Secretary.

11 “(h) RULES RELATING TO PAYMENT OF TAX.—

12 “(1) IMPOSITION OF TENTATIVE TAX.—

13 “(A) IN GENERAL.—If an individual is re-
14 quired to include any amount in gross income
15 under subsection (a) for any taxable year, there
16 is hereby imposed, immediately before the expa-
17 triation date, a tax in an amount equal to the
18 amount of tax which would be imposed if the
19 taxable year were a short taxable year ending
20 on the expatriation date.

21 “(B) DUE DATE.—The due date for any
22 tax imposed by subparagraph (A) shall be the
23 90th day after the expatriation date.

24 “(C) TREATMENT OF TAX.—Any tax paid
25 under subparagraph (A) shall be treated as a

1 payment of the tax imposed by this chapter for
2 the taxable year to which subsection (a) applies.

3 “(2) DEFERRAL OF TAX.—The payment of any
4 tax attributable to amounts included in gross income
5 under subsection (a) may be deferred to the same
6 extent, and in the same manner, as any tax imposed
7 by chapter 11, except that the Secretary may extend
8 the period for extension of time for paying tax under
9 section 6161 to such number of years as the Sec-
10 retary determines appropriate.

11 “(3) RULES RELATING TO SECURITY INTER-
12 ESTS.—

13 “(A) ADEQUACY OF SECURITY INTER-
14 ESTS.—In determining the adequacy of any se-
15 curity to be provided under this section, the
16 Secretary may take into account the principles
17 of section 2056A.

18 “(B) SPECIAL RULE FOR TRUST.—If a
19 taxpayer is required by this section to provide
20 security in connection with any tax imposed by
21 reason of this section with respect to the hold-
22 ing of an interest in a trust and any trustee of
23 such trust is an individual citizen of the United
24 States or a domestic corporation, such trustee
25 shall be required to provide such security upon

1 notification by the taxpayer of such require-
2 ment.

3 “(i) COORDINATION WITH ESTATE AND GIFT
4 TAXES.—If subsection (a) applies to property held by an
5 individual for any taxable year and—

6 “(1) such property is includible in the gross es-
7 tate of such individual solely by reason of section
8 2107, or

9 “(2) section 2501 applies to a transfer of such
10 property by such individual solely by reason of sec-
11 tion 2501(a)(3),

12 then there shall be allowed as a credit against the addi-
13 tional tax imposed by section 2101 or 2501, whichever is
14 applicable, solely by reason of section 2107 or 2501(a)(3)
15 an amount equal to the increase in the tax imposed by
16 this chapter for such taxable year by reason of this sec-
17 tion.

18 “(j) REGULATIONS.—The Secretary shall prescribe
19 such regulations as may be necessary or appropriate to
20 carry out the purposes of this section, including regula-
21 tions to prevent double taxation by ensuring that—

22 “(1) appropriate adjustments are made to basis
23 to reflect gain recognized by reason of subsection (a)
24 and the exclusion provided by subsection (b),

1 “(2) no interest in property is treated as held
2 for purposes of this section by more than one tax-
3 payer, and

4 “(3) any gain by reason of a deemed sale under
5 subsection (a) of an interest in a corporation, part-
6 nership, trust, or estate is reduced to reflect that
7 portion of such gain which is attributable to an in-
8 terest in a trust which a shareholder, partner, or
9 beneficiary is treated as holding directly under sub-
10 section (f)(1)(C).

11 “(k) CROSS REFERENCE.—

**“For income tax treatment of individuals who ter-
minate United States citizenship, see section
7701(a)(47).”**

12 (b) DEFINITION OF TERMINATION OF UNITED
13 STATES CITIZENSHIP.—Section 7701(a) of the Internal
14 Revenue Code of 1986 is amended by adding at the end
15 the following new paragraph:

16 “(47) TERMINATION OF UNITED STATES CITI-
17 ZENSHIP.—An individual shall not cease to be treat-
18 ed as a United States citizen before the date on
19 which the individual’s citizenship is treated as relin-
20 quished under section 877A(e)(3).”

21 (c) CONFORMING AMENDMENTS.—

22 (1) Section 877 of the Internal Revenue Code
23 of 1986 is amended by adding at the end the follow-
24 ing new subsection:

1 “(f) APPLICATION.—This section shall not apply to
2 any individual who relinquishes (within the meaning of
3 section 877A(e)(3)) United States citizenship on or after
4 February 6, 1995.”

5 (2) Section 2107(c) of such Code is amended by
6 adding at the end the following new paragraph:

7 “(3) CROSS REFERENCE.—For credit against
8 the tax imposed by subsection (a) for expatriation
9 tax, see section 877A(i).”

10 (3) Section 2501(a)(3) of such Code is amended
11 by adding at the end the following new flush sen-
12 tence:

13 “For credit against the tax imposed under this sec-
14 tion by reason of this paragraph, see section
15 877A(i).”

16 (4) Section 6851 of such Code is amended by
17 striking subsection (d) and by redesignating sub-
18 section (e) as subsection (d).

19 (5) Paragraph (10) of section 7701(b) of such
20 Code is amended by adding at the end the following
21 new sentence: “This paragraph shall not apply to
22 any long-term resident of the United States who is
23 an expatriate (as defined in section 877A(e)(1)).”

24 (d) CLERICAL AMENDMENT.—The table of sections
25 for subpart A of part II of subchapter N of chapter 1

1 of the Internal Revenue Code of 1986 is amended by in-
2 serting after the item relating to section 877 the following
3 new item:

“Sec. 877A. Tax responsibilities of expatriation.”

4 (e) EFFECTIVE DATE.—

5 (1) IN GENERAL.—The amendments made by
6 this section shall apply to expatriates (within the
7 meaning of section 877A(e) of the Internal Revenue
8 Code of 1986, as added by this section) whose expa-
9 triation date (as so defined) occurs on or after Feb-
10 ruary 6, 1995.

11 (2) DUE DATE FOR TENTATIVE TAX.—The due
12 date under section 877A(h)(1)(B) of such Code shall
13 in no event occur before the 90th day after the date
14 of the enactment of this Act.

15 **SEC. 2. BASIS OF ASSETS OF NONRESIDENT ALIEN INDIVID-**
16 **UALS BECOMING CITIZENS OR RESIDENTS.**

17 (a) IN GENERAL.—Part IV of subchapter O of chap-
18 ter 1 of the Internal Revenue Code of 1986 (relating to
19 special rules for gain or loss on disposition of property)
20 is amended by redesignating section 1061 as section 1062
21 and by inserting after section 1060 the following new sec-
22 tion:

1 **“SEC. 1061. BASIS OF ASSETS OF NONRESIDENT ALIEN INDI-**
2 **VIDUALS BECOMING CITIZENS OR RESI-**
3 **DENTS.**

4 “(a) GENERAL RULE.—If a nonresident alien individ-
5 ual becomes a citizen or resident of the United States,
6 gain or loss on the disposition of any property held on
7 the date the individual becomes such a citizen or resident
8 shall be determined by substituting, as of the applicable
9 date, the fair market value of such property (on the appli-
10 cable date) for its cost basis.

11 “(b) EXCEPTION FOR DEPRECIATION.—Any deduc-
12 tion under this chapter for depreciation, depletion, or am-
13 ortization shall be determined without regard to the appli-
14 cation of this section.

15 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-
16 poses of this section—

17 “(1) APPLICABLE DATE.—The term ‘applicable
18 date’ means, with respect to any property to which
19 subsection (a) applies, the earlier of—

20 “(A) the date the individual becomes a citi-
21 zen or resident of the United States, or

22 “(B) the date the property first becomes
23 subject to tax under this subtitle by reason of
24 being used in a United States trade or business
25 or by reason of becoming a United States real

1 property interest (within the meaning of section
2 897(c)(1)).

3 “(2) RESIDENT.—The term ‘resident’ does not
4 include an individual who is treated as a resident of
5 a foreign country under the provisions of a tax trea-
6 ty between the United States and a foreign country
7 and who does not waive the benefits of such treaty
8 applicable to residents of the foreign country.

9 “(3) TRUSTS.—A trust shall not be treated as
10 an individual.

11 “(4) ELECTION NOT TO HAVE SECTION
12 APPLY.—An individual may elect not to have this
13 section apply solely for purposes of determining gain
14 with respect to any property. Such election shall
15 apply only to property specified in the election and,
16 once made, shall be irrevocable.

17 “(5) SECTION ONLY TO APPLY ONCE.—This
18 section shall apply only with respect to the first time
19 the individual becomes either a citizen or resident of
20 the United States.

21 “(d) REGULATIONS.—The Secretary shall prescribe
22 regulations for purposes of this section, including regula-
23 tions—

1 “(1) for application of this section in the case
2 of property which consists of a direct or indirect in-
3 terest in a trust, and

4 “(2) providing look-thru rules in the case of any
5 indirect interest in any United States real property
6 interest (within the meaning of section 897(c)(1)) or
7 property used in a United States trade or business.”

8 (b) CONFORMING AMENDMENT.—The table of sec-
9 tions for part IV of subchapter O of chapter 1 of the Inter-
10 nal Revenue Code of 1986 is amended by striking the item
11 relating to section 1061 and inserting the following new
12 items:

“Sec. 1061. Basis of assets of nonresident alien individuals becoming citizens
or residents.

“Sec. 1062. Cross references.”

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to dispositions after the date of
15 the enactment of this Act, and to any disposition occurring
16 on or before such date to which section 877A of the Inter-
17 nal Revenue Code of 1986 (as added by section 1) applies.

○

S 700 IS——2