

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5790

To amend the Internal Revenue Code of 1986 to allow the deduction for State and local real property taxes whether or not the taxpayer itemizes other deductions, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 15, 2008

Mr. FOSTER 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 the deduction for State and local real property taxes whether or not the taxpayer itemizes other deductions, 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. SHORT TITLE.**

4        This Act may be cited as the “Universal Homeowner  
5        Tax Cut Act of 2008”.

1 **TITLE I—DEDUCTION FOR**  
2 **STATE AND LOCAL REAL**  
3 **PROPERTY TAXES ALLOWED**  
4 **WHETHER OR NOT TAXPAYER**  
5 **ITEMIZES OTHER DEDUC-**  
6 **TIONS**

7 **SEC. 101. DEDUCTION FOR STATE AND LOCAL REAL PROP-**  
8 **ERTY TAXES ALLOWED WHETHER OR NOT**  
9 **TAXPAYER ITEMIZES OTHER DEDUCTIONS.**

10 (a) **IN GENERAL.**—Subsection (a) of section 62 of the  
11 Internal Revenue Code of 1986 (defining adjusted gross  
12 income) is amended by inserting before the last sentence  
13 the following new paragraph:

14 “(22) **STATE AND LOCAL REAL PROPERTY**  
15 **TAXES.**—At the election of the taxpayer, so much of  
16 the deduction allowed by section 164 for State and  
17 local real property taxes (within the meaning of sec-  
18 tion 164) as does not exceed \$1,000 (\$2,000 in the  
19 case of a joint return).”.

20 (b) **EFFECTIVE DATE.**—The amendment made by  
21 subsection (a) shall apply to taxable years beginning after  
22 December 31, 2008.

1 **TITLE II—REVENUE PROVISIONS**  
2 **Subtitle A—Nonqualified Deferred**  
3 **Compensation From Certain**  
4 **Tax Indifferent Parties**

5 **SEC. 201. NONQUALIFIED DEFERRED COMPENSATION**  
6 **FROM CERTAIN TAX INDIFFERENT PARTIES.**

7 (a) IN GENERAL.—Subpart B of part II of sub-  
8 chapter E of chapter 1 of the Internal Revenue Code of  
9 1986 (relating to taxable year for which items of gross  
10 income included) is amended by inserting after section 457  
11 the following new section:

12 **“SEC. 457A. NONQUALIFIED DEFERRED COMPENSATION**  
13 **FROM CERTAIN TAX INDIFFERENT PARTIES.**

14 “(a) IN GENERAL.—Any compensation which is de-  
15 ferred under a nonqualified deferred compensation plan of  
16 a nonqualified entity shall be taken into account for pur-  
17 poses of this chapter when there is no substantial risk of  
18 forfeiture of the rights to such compensation.

19 “(b) NONQUALIFIED ENTITY.—For purposes of this  
20 section, the term ‘nonqualified entity’ means—

21 “(1) any foreign corporation unless substan-  
22 tially all of its income is—

23 “(A) effectively connected with the conduct  
24 of a trade or business in the United States, or

1           “(B) subject to a comprehensive foreign in-  
2           come tax, and

3           “(2) any partnership unless substantially all of  
4           its income is allocated to persons other than—

5           “(A) foreign persons with respect to whom  
6           such income is not subject to a comprehensive  
7           foreign income tax, and

8           “(B) organizations which are exempt from  
9           tax under this title.

10          “(c) ASCERTAINABILITY OF AMOUNTS OF COM-  
11          PENSATION.—

12           “(1) IN GENERAL.—If the amount of any com-  
13           pensation is not ascertainable at the time that such  
14           compensation is otherwise to be taken into account  
15           under subsection (a)—

16           “(A) such amount shall be so taken into  
17           account when ascertainable, and

18           “(B) the tax imposed under this chapter  
19           for the taxable year in which such compensation  
20           is taken into account under subparagraph (A)  
21           shall be increased by the sum of—

22           “(i) the amount of interest determined  
23           under paragraph (2), and

24           “(ii) an amount equal to 20 percent of  
25           the amount of such compensation.

1           “(2) INTEREST.—For purposes of paragraph  
2           (1)(B)(i), the interest determined under this para-  
3           graph for any taxable year is the amount of interest  
4           at the underpayment rate under section 6621 plus  
5           1 percentage point on the underpayments that would  
6           have occurred had the deferred compensation been  
7           includible in gross income for the taxable year in  
8           which first deferred or, if later, the first taxable year  
9           in which such deferred compensation is not subject  
10          to a substantial risk of forfeiture.

11          “(d) OTHER DEFINITIONS AND SPECIAL RULES.—  
12          For purposes of this section—

13                 “(1) SUBSTANTIAL RISK OF FORFEITURE.—

14                         “(A) IN GENERAL.—The rights of a person  
15                         to compensation shall be treated as subject to  
16                         a substantial risk of forfeiture only if such per-  
17                         son’s rights to such compensation are condi-  
18                         tioned upon the future performance of substan-  
19                         tial services by any individual.

20                         “(B) EXCEPTION FOR COMPENSATION  
21                         BASED ON GAIN RECOGNIZED ON AN INVEST-  
22                         MENT ASSET.—

23                                 “(i) IN GENERAL.—To the extent pro-  
24                                 vided in regulations prescribed by the Sec-  
25                                 retary, if compensation is determined solely

1 by reference to the amount of gain recog-  
2 nized on the disposition of an investment  
3 asset, such compensation shall be treated  
4 as subject to a substantial risk of for-  
5 feiture until the date of such disposition.

6 “(ii) INVESTMENT ASSET.—For pur-  
7 poses of clause (i), the term ‘investment  
8 asset’ means any single asset (other than  
9 an investment fund or similar entity)—

10 “(I) acquired directly by an in-  
11 vestment fund or similar entity,

12 “(II) with respect to which such  
13 entity does not (nor does any person  
14 related to such entity) participate in  
15 the active management of such asset  
16 (or if such asset is an interest in an  
17 entity, in the active management of  
18 the activities of such entity), and

19 “(III) substantially all of any  
20 gain on the disposition of which (other  
21 than such deferred compensation) is  
22 allocated to investors in such entity.

23 “(iii) COORDINATION WITH SPECIAL  
24 RULE FOR SHORT-TERM DEFERRALS OF  
25 COMPENSATION.—Paragraph (3)(B) shall

1 not apply to any compensation to which  
2 clause (i) applies.

3 “(2) COMPREHENSIVE FOREIGN INCOME TAX.—

4 The term ‘comprehensive foreign income tax’ means,  
5 with respect to any foreign person, the income tax  
6 of a foreign country if—

7 “(A) such person is eligible for the benefits  
8 of a comprehensive income tax treaty between  
9 such foreign country and the United States, or

10 “(B) such person demonstrates to the sat-  
11 isfaction of the Secretary that such foreign  
12 country has a comprehensive income tax.

13 Such term shall not include any tax unless such tax  
14 includes rules for the deductibility of deferred com-  
15 pensation which are similar to the rules of this title.

16 “(3) NONQUALIFIED DEFERRED COMPENSA-  
17 TION PLAN.—

18 “(A) IN GENERAL.—The term ‘non-  
19 qualified deferred compensation plan’ has the  
20 meaning given such term under section  
21 409A(d), except that such term shall include  
22 any plan that provides a right to compensation  
23 based on the appreciation in value of a specified  
24 number of equity units of the service recipient.

1           “(B) EXCEPTION FOR SHORT-TERM DE-  
2           FERRALS.—Compensation shall not be treated  
3           as deferred for purposes of this section if the  
4           service provider receives payment of such com-  
5           pensation not later than 12 months after the  
6           end of the taxable year of the service recipient  
7           during which the right to the payment of such  
8           compensation is no longer subject to a substan-  
9           tial risk of forfeiture.

10           “(4) EXCEPTION FOR CERTAIN COMPENSATION  
11           WITH RESPECT TO EFFECTIVELY CONNECTED IN-  
12           COME.—In the case a foreign corporation with in-  
13           come which is taxable under section 882, this section  
14           shall not apply to compensation which, had such  
15           compensation had been paid in cash on the date that  
16           such compensation ceased to be subject to a sub-  
17           stantial risk of forfeiture, would have been deduct-  
18           ible by such foreign corporation against such income.

19           “(5) APPLICATION OF RULES.—Rules similar to  
20           the rules of paragraphs (5) and (6) of section  
21           409A(d) shall apply.

22           “(e) REGULATIONS.—The Secretary shall prescribe  
23           such regulations as may be necessary or appropriate to  
24           carry out the purposes of this section, including regula-  
25           tions disregarding a substantial risk of forfeiture in cases

1 where necessary to carry out the purposes of this sec-  
2 tion.”.

3 (b) CONFORMING AMENDMENT.—Section 26(b)(2) of  
4 such Code is amended by striking “and” at the end of  
5 subparagraph (S), by striking the period at the end of sub-  
6 paragraph (T) and inserting “, and”, and by adding at  
7 the end the following new subparagraph:

8 “(U) section 457A(c)(1)(B) (relating to as-  
9 certainability of amounts of compensation).”.

10 (c) CLERICAL AMENDMENT.—The table of sections  
11 of subpart B of part II of subchapter E of chapter 1 of  
12 such Code is amended by inserting after the item relating  
13 to section 457 the following new item:

“Sec. 457A. Nonqualified deferred compensation from certain tax indifferent  
parties.”.

14 (d) EFFECTIVE DATE.—

15 (1) IN GENERAL.—Except as otherwise pro-  
16 vided in this subsection, the amendments made by  
17 this section shall apply to amounts deferred which  
18 are attributable to services performed after Decem-  
19 ber 31, 2007.

20 (2) APPLICATION TO EXISTING DEFERRALS.—

21 In the case of any amount deferred to which the  
22 amendments made by this section do not apply solely  
23 by reason of the fact that the amount is attributable  
24 to services performed before January 1, 2008, to the

1 extent such amount is not includible in gross income  
2 in a taxable year beginning before 2017, such  
3 amounts shall be includible in gross income in the  
4 later of—

5 (A) the last taxable year beginning before  
6 2017, or

7 (B) the taxable year in which there is no  
8 substantial risk of forfeiture of the rights to  
9 such compensation (determined in the same  
10 manner as determined for purposes of section  
11 457A of the Internal Revenue Code of 1986, as  
12 added by this section).

13 (3) ACCELERATED PAYMENTS.—No later than  
14 60 days after the date of the enactment of this Act,  
15 the Secretary shall issue guidance providing a lim-  
16 ited period of time during which a nonqualified de-  
17 ferred compensation arrangement attributable to  
18 services performed on or before December 31, 2007,  
19 may, without violating the requirements of section  
20 409A(a) of the Internal Revenue Code of 1986, be  
21 amended to conform the date of distribution to the  
22 date the amounts are required to be included in in-  
23 come.

24 (4) CERTAIN BACK-TO-BACK ARRANGEMENTS.—

25 If the taxpayer is also a service recipient and main-

1 tains one or more nonqualified deferred compensa-  
2 tion arrangements for its service providers under  
3 which any amount is attributable to services per-  
4 formed on or before December 31, 2007, the guid-  
5 ance issued under paragraph (3) shall permit such  
6 arrangements to be amended to conform the dates of  
7 distribution under such arrangement to the date  
8 amounts are required to be included in the income  
9 of such taxpayer under this subsection.

10 (5) ACCELERATED PAYMENT NOT TREATED AS  
11 MATERIAL MODIFICATION.—Any amendment to a  
12 nonqualified deferred compensation arrangement  
13 made pursuant to paragraph (3) or (4) shall not be  
14 treated as a material modification of the arrange-  
15 ment for purposes of section 409A of the Internal  
16 Revenue Code of 1986.

17 **Subtitle B—Codification of**  
18 **Economic Substance Doctrine**

19 **SEC. 211. CODIFICATION OF ECONOMIC SUBSTANCE DOC-**  
20 **TRINE.**

21 (a) IN GENERAL.—Section 7701 of the Internal Rev-  
22 enue Code of 1986 is amended by redesignating subsection  
23 (p) as subsection (q) and by inserting after subsection (o)  
24 the following new subsection:

1       “(p) CLARIFICATION OF ECONOMIC SUBSTANCE  
2 DOCTRINE.—

3               “(1) APPLICATION OF DOCTRINE.—In the case  
4 of any transaction to which the economic substance  
5 doctrine is relevant, such transaction shall be treated  
6 as having economic substance only if—

7                       “(A) the transaction changes in a mean-  
8 ingful way (apart from Federal income tax ef-  
9 fects) the taxpayer’s economic position, and

10                      “(B) the taxpayer has a substantial pur-  
11 pose (apart from Federal income tax effects)  
12 for entering into such transaction.

13               “(2) SPECIAL RULE WHERE TAXPAYER RELIES  
14 ON PROFIT POTENTIAL.—

15                      “(A) IN GENERAL.—The potential for  
16 profit of a transaction shall be taken into ac-  
17 count in determining whether the requirements  
18 of subparagraphs (A) and (B) of paragraph (1)  
19 are met with respect to the transaction only if  
20 the present value of the reasonably expected  
21 pre-tax profit from the transaction is substan-  
22 tial in relation to the present value of the ex-  
23 pected net tax benefits that would be allowed if  
24 the transaction were respected.

1           “(B) TREATMENT OF FEES AND FOREIGN  
2 TAXES.—Fees and other transaction expenses  
3 and foreign taxes shall be taken into account as  
4 expenses in determining pre-tax profit under  
5 subparagraph (A).

6           “(3) STATE AND LOCAL TAX BENEFITS.—For  
7 purposes of paragraph (1), any State or local income  
8 tax effect which is related to a Federal income tax  
9 effect shall be treated in the same manner as a Fed-  
10 eral income tax effect.

11           “(4) FINANCIAL ACCOUNTING BENEFITS.—For  
12 purposes of paragraph (1)(B), achieving a financial  
13 accounting benefit shall not be taken into account as  
14 a purpose for entering into a transaction if such  
15 transaction results in a Federal income tax benefit.

16           “(5) DEFINITIONS AND SPECIAL RULES.—For  
17 purposes of this subsection—

18           “(A) ECONOMIC SUBSTANCE DOCTRINE.—  
19 The term ‘economic substance doctrine’ means  
20 the common law doctrine under which tax bene-  
21 fits under subtitle A with respect to a trans-  
22 action are not allowable if the transaction does  
23 not have economic substance or lacks a business  
24 purpose.

1           “(B) EXCEPTION FOR PERSONAL TRANS-  
2           ACTIONS OF INDIVIDUALS.—In the case of an  
3           individual, paragraph (1) shall apply only to  
4           transactions entered into in connection with a  
5           trade or business or an activity engaged in for  
6           the production of income.

7           “(C) OTHER COMMON LAW DOCTRINES  
8           NOT AFFECTED.—Except as specifically pro-  
9           vided in this subsection, the provisions of this  
10          subsection shall not be construed as altering or  
11          supplanting any other rule of law, and the re-  
12          quirements of this subsection shall be construed  
13          as being in addition to any such other rule of  
14          law.

15          “(D) DETERMINATION OF APPLICATION OF  
16          DOCTRINE NOT AFFECTED.—The determination  
17          of whether the economic substance doctrine is  
18          relevant to a transaction shall be made in the  
19          same manner as if this subsection had never  
20          been enacted.

21          “(6) REGULATIONS.—The Secretary shall pre-  
22          scribe such regulations as may be necessary or ap-  
23          propriate to carry out the purposes of this sub-  
24          section. Such regulations may include exemptions  
25          from the application of this subsection.”.

1 (b) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to transactions entered into after  
3 the date of the enactment of this Act.

4 **SEC. 212. PENALTIES FOR UNDERPAYMENTS.**

5 (a) PENALTY FOR UNDERPAYMENTS ATTRIBUTABLE  
6 TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE.—

7 (1) IN GENERAL.—Subsection (b) of section  
8 6662 of the Internal Revenue Code of 1986 is  
9 amended by inserting after paragraph (5) the fol-  
10 lowing new paragraph:

11 “(6) Any disallowance of claimed tax benefits  
12 by reason of a transaction lacking economic sub-  
13 stance (within the meaning of section 7701(p)) or  
14 failing to meet the requirements of any similar rule  
15 of law.”.

16 (2) INCREASED PENALTY FOR NONDISCLOSED  
17 TRANSACTIONS.—Section 6662 of such Code is  
18 amended by adding at the end the following new  
19 subsection:

20 “(i) INCREASE IN PENALTY IN CASE OF NONDIS-  
21 CLOSED NONECONOMIC SUBSTANCE TRANSACTIONS.—

22 “(1) IN GENERAL.—To the extent that a por-  
23 tion of the underpayment to which this section ap-  
24 plies is attributable to one or more nondisclosed non-  
25 economic substance transactions, subsection (a) shall

1 be applied with respect to such portion by sub-  
2 stituting ‘40 percent’ for ‘20 percent’.

3 “(2) NONDISCLOSED NONECONOMIC SUB-  
4 STANCE TRANSACTIONS.—For purposes of this sub-  
5 section, the term ‘nondisclosed noneconomic sub-  
6 stance transaction’ means any portion of a trans-  
7 action described in subsection (b)(6) with respect to  
8 which the relevant facts affecting the tax treatment  
9 are not adequately disclosed in the return nor in a  
10 statement attached to the return.

11 “(3) SPECIAL RULE FOR AMENDED RE-  
12 TURNS.—Except as provided in regulations, in no  
13 event shall any amendment or supplement to a re-  
14 turn of tax be taken into account for purposes of  
15 this subsection if the amendment or supplement is  
16 filed after the earlier of the date the taxpayer is first  
17 contacted by the Secretary regarding the examina-  
18 tion of the return or such other date as is specified  
19 by the Secretary.”.

20 (3) CONFORMING AMENDMENT.—Subparagraph  
21 (B) of section 6662A(e)(2) of such Code is amend-  
22 ed—

23 (A) by striking “section 6662(h)” and in-  
24 serting “subsection (h) or (i) of section 6662”,  
25 and

1 (B) by striking “GROSS VALUATION  
2 MISSTATEMENT PENALTY” in the heading and  
3 inserting “CERTAIN INCREASED UNDER-  
4 PAYMENT PENALTIES”.

5 (b) REASONABLE CAUSE EXCEPTION NOT APPLICA-  
6 BLE TO NONECONOMIC SUBSTANCE TRANSACTIONS, TAX  
7 SHELTERS, AND CERTAIN LARGE CORPORATIONS.—Sub-  
8 section (c) of section 6664 of such Code is amended—

9 (1) by redesignating paragraphs (2) and (3) as  
10 paragraphs (3) and (4), respectively,

11 (2) by striking “paragraph (2)” in paragraph  
12 (4), as so redesignated, and inserting “paragraph  
13 (3)”, and

14 (3) by inserting after paragraph (1) the fol-  
15 lowing new paragraph:

16 “(2) EXCEPTION FOR NONECONOMIC SUB-  
17 STANCE TRANSACTIONS, TAX SHELTERS, AND CER-  
18 TAIN LARGE CORPORATIONS.—Paragraph (1) shall  
19 not apply—

20 “(A) to any portion of an underpayment  
21 which is attributable to one or more tax shelters  
22 (as defined in section 6662(d)(2)(C)) or trans-  
23 actions described in section 6662(b)(6), and

1           “(B) to any taxpayer if such taxpayer is a  
2           specified large corporation (as defined in section  
3           6662(d)(2)(D)(ii)).”.

4           (c) APPLICATION OF PENALTY FOR ERRONEOUS  
5 CLAIM FOR REFUND OR CREDIT TO NONECONOMIC SUB-  
6 STANCE TRANSACTIONS.—Section 6676 of such Code is  
7 amended by redesignating subsection (c) as subsection (d)  
8 and inserting after subsection (b) the following new sub-  
9 section:

10          “(c) NONECONOMIC SUBSTANCE TRANSACTIONS  
11 TREATED AS LACKING REASONABLE BASIS.—For pur-  
12 poses of this section, any excessive amount which is attrib-  
13 utable to any transaction described in section 6662(b)(6)  
14 shall not be treated as having a reasonable basis.”.

15          (d) SPECIAL UNDERSTATEMENT REDUCTION RULE  
16 FOR CERTAIN LARGE CORPORATIONS.—

17           (1) IN GENERAL.—Paragraph (2) of section  
18           6662(d) of such Code is amended by adding at the  
19           end the following new subparagraph:

20                   “(D) SPECIAL REDUCTION RULE FOR CER-  
21                   TAIN LARGE CORPORATIONS.—

22                           “(i) IN GENERAL.—In the case of any  
23                           specified large corporation—

24                                   “(I) subparagraph (B) shall not  
25                                   apply, and

1           “(II) the amount of the under-  
2           statement under subparagraph (A)  
3           shall be reduced by that portion of the  
4           understatement which is attributable  
5           to any item with respect to which the  
6           taxpayer has a reasonable belief that  
7           the tax treatment of such item by the  
8           taxpayer is more likely than not the  
9           proper tax treatment of such item.

10           “(ii) SPECIFIED LARGE CORPORA-  
11           TION.—

12           “(I) IN GENERAL.—For purposes  
13           of this subparagraph, the term ‘speci-  
14           fied large corporation’ means any cor-  
15           poration with gross receipts in excess  
16           of \$100,000,000 for the taxable year  
17           involved.

18           “(II) AGGREGATION RULE.—All  
19           persons treated as a single employer  
20           under section 52(a) shall be treated as  
21           one person for purposes of subclause  
22           (I).”.

23           (2) CONFORMING AMENDMENT.—Subparagraph  
24           (C) of section 6662(d)(2) of such Code is amended

1       by striking “Subparagraph (B)” and inserting “Sub-  
2       paragraphs (B) and (D)(i)(II)”.

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

○