

118TH CONGRESS
1ST SESSION

S. 3402

To amend the Internal Revenue Code of 1986 to impose an excise tax on the failure of certain hedge funds owning excess single-family residences to dispose of such residences, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 5, 2023

Mr. MERKLEY (for himself and Ms. SMITH) 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 impose an excise tax on the failure of certain hedge funds owning excess single-family residences to dispose of such residences, 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 “End Hedge Fund Con-
5 trol of American Homes Act”.

1 **SEC. 2. EXCISE TAX ON CERTAIN TAXPAYERS FAILING TO**
 2 **SELL EXCESS SINGLE-FAMILY RESIDENCES.**

3 (a) IN GENERAL.—Subtitle D of the Internal Rev-
 4 enue Code of 1986 is amended by adding at the end the
 5 following new chapter:

6 **“CHAPTER 50B—EXCESS SINGLE-FAMILY**
 7 **RESIDENCES**

“Sec. 5000E. Newly acquired single-family residences.

“Sec. 5000F. Excess single-family residences.

“Sec. 5000G. Definitions and other special rules.

8 **“SEC. 5000E. NEWLY ACQUIRED SINGLE-FAMILY RESI-**
 9 **DENCES.**

10 “(a) IN GENERAL.—In the case of an applicable tax-
 11 payer, there is hereby imposed a tax on the acquisition
 12 of any newly acquired single-family residence equal to 50
 13 percent of the fair market value of such residence.

14 “(b) NEWLY ACQUIRED SINGLE-FAMILY RESI-
 15 DENCE.—For purposes of this section, the term ‘newly ac-
 16 quired single-family residence’ means any single-family
 17 residence which was acquired by the taxpayer in any tax-
 18 able year which begins after the date of the enactment
 19 of this chapter.

20 **“SEC. 5000F. EXCESS SINGLE-FAMILY RESIDENCES.**

21 “(a) IN GENERAL.—In the case of an applicable tax-
 22 payer who fails to meet the requirements of subsection (b),
 23 there is hereby imposed a tax equal to the product of—

24 “(1) \$50,000, and

1 “(2) the excess of—

2 “(A) the number of applicable single-family
3 residences owned by the taxpayer as of the last
4 day of the taxable year, over

5 “(B) the sum of—

6 “(i) 50 (zero in the case of any hedge
7 fund taxpayer), plus

8 “(ii) the maximum permissible units
9 for the taxable year.

10 “(b) REQUIREMENT.—

11 “(1) IN GENERAL.—An applicable taxpayer
12 meets the requirement of this subsection for any tax-
13 able year if the number of applicable single-family
14 residences owned by the taxpayer as of the last day
15 of the taxable year is equal to or less than the max-
16 imum permissible units determined with respect to
17 such taxpayer for such taxable year.

18 “(2) SPECIAL RULE FOR CERTAIN SALES.—For
19 purposes of applying paragraph (1), a single-family
20 residence which is sold or transferred in a disquali-
21 fied sale during the taxable year shall be treated as
22 a single-family residence which is owned by the ap-
23 plicable taxpayer as of the last day of such taxable
24 year.

1 “(c) MAXIMUM PERMISSIBLE UNITS.—The max-
 2 imum permissible units with respect to any applicable tax-
 3 payer for any taxable year shall be determined as follows:

“In the case of—	The maximum permis- sible units for a hedge fund taxpayer is—	The maximum permis- sible units for any other applicable taxpayer is—
the first full taxable year beginning after the ap- plicable date . . .	90 percent of the num- ber of applicable sin- gle-family residences owned by the taxpayer on the applicable date	50 plus 90 percent of the number of applicable single-family resi- dences owned by the taxpayer on the appli- cable date
the second taxable year beginning after the ap- plicable date . . .	80 percent of the num- ber of applicable sin- gle-family residences owned by the taxpayer on the applicable date	50 plus 80 percent of the number of applicable single-family resi- dences owned by the taxpayer on the appli- cable date
the third taxable year be- ginning after the ap- plicable date . . .	70 percent of the num- ber of applicable sin- gle-family residences owned by the taxpayer on the applicable date	50 plus 70 percent of the number of applicable single-family resi- dences owned by the taxpayer on the appli- cable date
the fourth taxable year beginning after the ap- plicable date . . .	60 percent of the num- ber of applicable sin- gle-family residences owned by the taxpayer on the applicable date	50 plus 60 percent of the number of applicable single-family resi- dences owned by the taxpayer on the appli- cable date
the fifth taxable year be- ginning after the ap- plicable date . . .	50 percent of the num- ber of applicable sin- gle-family residences owned by the taxpayer on the applicable date	50 plus 50 percent of the number of applicable single-family resi- dences owned by the taxpayer on the appli- cable date
the sixth taxable year be- ginning after the ap- plicable date . . .	40 percent of the num- ber of applicable sin- gle-family residences owned by the taxpayer on the applicable date	50 plus 40 percent of the number of applicable single-family resi- dences owned by the taxpayer on the appli- cable date
the seventh taxable year beginning after the ap- plicable date . . .	30 percent of the num- ber of applicable sin- gle-family residences owned by the taxpayer on the applicable date	50 plus 30 percent of the number of applicable single-family resi- dences owned by the taxpayer on the appli- cable date
the eighth taxable year beginning after the ap- plicable date . . .	20 percent of the num- ber of applicable sin- gle-family residences owned by the taxpayer on the applicable date	50 plus 20 percent of the number of applicable single-family resi- dences owned by the taxpayer on the appli- cable date

“In the case of—	The maximum permissible units for a hedge fund taxpayer is—	The maximum permissible units for any other applicable taxpayer is—
the ninth taxable year beginning after the applicable date . . .	10 percent of the number of applicable single-family residences owned by the taxpayer on the applicable date	50 plus 10 percent of the number of applicable single-family residences owned by the taxpayer on the applicable date
any taxable year beginning more than 9 years after the applicable date . . .	0	50.

1 “(d) DEFINITIONS.—For purposes of this section—

2 “(1) APPLICABLE SINGLE-FAMILY RESI-
3 DENCE.—The term ‘applicable single-family resi-
4 dence’ means any single-family residence which was
5 acquired on or before the applicable date.

6 “(2) APPLICABLE DATE.—

7 “(A) IN GENERAL.—The term ‘applicable
8 date’ means—

9 “(i) the last day of the first full tax-
10 able year ending on or after the date of the
11 enactment of this chapter, or

12 “(ii) in the case of any taxpayer de-
13 scribed in subparagraph (B), the date pro-
14 vided in such subparagraph.

15 “(B) TAXPAYERS CHANGING STATUS.—

16 “(i) IN GENERAL.—In the case of any
17 applicable taxpayer described in clause (ii),
18 the applicable date means the last day of
19 the taxable year immediately preceding the

1 taxable year in which the taxpayer is de-
2 scribed in such clause.

3 “(ii) APPLICABLE TAXPAYER DE-
4 SCRIBED.—An applicable taxpayer is de-
5 scribed in this clause with respect to any
6 taxable year if—

7 “(I) such taxpayer was not a
8 hedge fund taxpayer for the preceding
9 taxable year, and

10 “(II) such taxpayer is a hedge
11 fund taxpayer for such taxable year.

12 “(3) HEDGE FUND TAXPAYER.—For purposes
13 of this subsection, the term ‘hedge fund taxpayer’
14 means, with respect to any taxable year, any appli-
15 cable taxpayer which has \$50,000,000 or more in
16 net value or assets under management on any day
17 during the taxable year.

18 **“SEC. 5000G. DEFINITIONS AND OTHER SPECIAL RULES.**

19 “(a) APPLICABLE TAXPAYER.—For purposes of this
20 chapter—

21 “(1) IN GENERAL.—The term ‘applicable tax-
22 payer’ means any applicable entity which—

23 “(A) manages funds pooled from investors,
24 and

1 “(B) is a fiduciary with respect to such in-
2 vestors.

3 “(2) APPLICABLE ENTITY.—

4 “(A) IN GENERAL.—The term ‘applicable
5 entity’ means—

6 “(i) any partnership,

7 “(ii) any corporation, or

8 “(iii) any real estate investment trust.

9 “(B) EXCEPTIONS.—The term ‘applicable
10 entity’ shall not include—

11 “(i) an organization which is de-
12 scribed in section 501(c)(3) and exempt
13 from tax under section 501(a), or

14 “(ii) an organization primarily en-
15 gaged in the construction or rehabilitation
16 of single-family residences.

17 “(b) SINGLE-FAMILY RESIDENCE.—For purposes of
18 this chapter—

19 “(1) IN GENERAL.—The term ‘single-family
20 residence’ means a residential property consisting of
21 1-to-4 dwelling units.

22 “(2) EXCEPTIONS.—Such term shall not in-
23 clude—

24 “(A) any unoccupied single-family resi-
25 dence acquired through foreclosure,

1 “(B) any single-family residence that is—

2 “(i) not rented or leased, and

3 “(ii) used as the principal residence

4 (within the meaning of section 121) of any

5 person who has an ownership interest in

6 the applicable taxpayer, or

7 “(C) any single-family residence con-

8 structed, acquired, or operated with Federal ap-

9 propriated funding sources.

10 “(c) ACQUISITION; OWNERSHIP.—For purposes of

11 this chapter, an applicable taxpayer shall be treated—

12 “(1) as acquiring a single-family residence if

13 the applicable taxpayer acquires a majority owner-

14 ship interest in the single-family residence, regard-

15 less of the percentage of that ownership interest,

16 and

17 “(2) as owning a single-family residence if the

18 applicable taxpayer owns a majority ownership inter-

19 est in the single-family residence, regardless of the

20 percentage of that ownership interest.

21 “(d) DISQUALIFIED SALE.—For purposes of this

22 chapter, the term ‘disqualified sale’ means any sale or

23 transfer to—

24 “(1) a corporation or other entity engaged in a

25 trade or business, or

1 “(2) an individual who owns any other single-
2 family residence at the time of such sale or transfer.

3 “(e) AGGREGATION RULES.—

4 “(1) IN GENERAL.—For purposes of this chap-
5 ter, all persons which are treated as a single em-
6 ployer under subsections (a) and (b) of section 52
7 shall be treated as a single person.

8 “(2) MODIFICATIONS.—For purposes of this
9 subsection—

10 “(A) section 52(a) shall be applied by sub-
11 stituting ‘component members’ for ‘members’,
12 and

13 “(B) for purposes of applying section
14 52(b), the term ‘trade or business’ shall include
15 any activity treated as a trade or business
16 under paragraph (5) or (6) of section 469(c)
17 (determined without regard to the phrase ‘To
18 the extent provided in regulations’ in such para-
19 graph (6)).

20 “(3) COMPONENT MEMBER.—For purposes of
21 this paragraph, the term ‘component member’ has
22 the meaning given such term by section 1563(b), ex-
23 cept that the determination shall be made without
24 regard to section 1563(b)(2).

25 “(f) REPORTING.—

1 “(1) IN GENERAL.—The Secretary shall require
2 such reporting as the Secretary determines nec-
3 essary or appropriate to carry out the purposes of
4 this section, including reporting with respect to—

5 “(A) the dates on which single-family resi-
6 dences owned by an applicable taxpayer were
7 acquired by such taxpayer, and

8 “(B) whether any person acquiring a sin-
9 gle-family residence from an applicable taxpayer
10 owns any other single-family residences at the
11 time of the acquisition.

12 “(2) FAILURE TO REPORT.—

13 “(A) IN GENERAL.—Any person who fails
14 to report information required under paragraph
15 (1) or who fails to include correct information
16 in such report shall pay a penalty of \$20,000.

17 “(B) REASONABLE CAUSE WAIVER.—No
18 penalty shall be imposed under this paragraph
19 with respect to any failure if it is shown that
20 such failure is due to reasonable cause and not
21 to willful neglect.

22 “(C) TREATMENT OF PENALTY.—The pen-
23 alty under this paragraph shall be paid upon
24 notice and demand by the Secretary, and shall
25 be assessed and collected in the same manner

1 as an assessable penalty under subchapter B of
2 chapter 68.”.

3 (b) TAX FORM.—Not later than 180 days after the
4 date of the enactment of this Act, the Secretary of the
5 Treasury (or the Secretary’s delegate) shall publish a form
6 to be used for calculating the amount of tax owned under
7 chapter 50B of the Internal Revenue Code of 1986 (as
8 added by subsection (a)).

9 (c) CERTIFICATION.—

10 (1) IN GENERAL.—The reporting required
11 under section 5000G(f)(1)(B) of the Internal Rev-
12 enue Code of 1986, as added by subsection (a), shall
13 include a certification from each individual to whom
14 a single-family residence is sold or transferred from
15 an applicable taxpayer.

16 (2) FORM OF CERTIFICATION.—The certifi-
17 cation required under this subsection shall be signed
18 by the purchaser or transferee and state the fol-
19 lowing:

20 (A) The name and address of the pur-
21 chaser or transferee.

22 (B) The sale is not a sale disqualified sale
23 (as defined in section 5000G(d) of the Internal
24 Revenue Code of 1986, as added by this sec-
25 tion).

1 (C) The purchaser or transferee will be
 2 subject to the penalty imposed under section
 3 5000G(f)(2) of such Code for any false certifi-
 4 cation.

5 (3) DEFINITIONS.—Any term used in this sub-
 6 section which is used in chapter 50B of the Internal
 7 Revenue Code of 1986 (as added by this section)
 8 shall have the meaning give such term under such
 9 chapter.

10 (d) CLERICAL AMENDMENT.—The table of chapters
 11 for subtitle D of the Internal Revenue Code of 1986 is
 12 amended by adding at the end the following new item:

“CHAPTER 50B—EXCESS SINGLE-FAMILY RESIDENCES”.

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

16 **SEC. 3. USE OF TAX REVENUES FOR DOWN PAYMENT AS-**
 17 **SISTANCE GRANTS.**

18 (a) ESTABLISHMENT OF HOUSING DOWNPAYMENT
 19 TRUST FUND.—

20 (1) IN GENERAL.—Subchapter A of chapter 98
 21 of the Internal Revenue Code of 1986 is amended by
 22 adding at the end the following new section:

23 **“SEC. 9512. HOUSING DOWNPAYMENT TRUST FUND.**

24 “(a) CREATION OF TRUST FUND.—There is estab-
 25 lished in the Treasury of the United States a trust fund

1 to be known as the Housing Downpayment Trust Fund
 2 (hereinafter in this section referred to as the ‘Trust
 3 Fund’), consisting of such amounts as may be appro-
 4 priated or credited to such Trust Fund as provided in this
 5 section and section 9602(b).

6 “(b) TRANSFERS TO TRUST FUND.—There are here-
 7 by appropriated to the Trust Fund amounts equivalent to
 8 revenues received in the Treasury from the tax imposed
 9 by sections 5000E and 5000F.

10 “(c) EXPENDITURES FROM TRUST FUND.—Amounts
 11 in the Trust Fund shall be available, as provided in appro-
 12 priations Acts, only for grants under section 3(b) of the
 13 End Hedge Fund Control of American Homes Act.”.

14 (2) CLERICAL AMENDMENT.—The table of sec-
 15 tions for subchapter A of chapter 98 of the Internal
 16 Revenue Code of 1986 is amended by adding at the
 17 end the following new item:

“Sec. 9512. Housing Downpayment Trust Fund.”.

18 (b) GRANTS PROGRAM FOR DOWN PAYMENT ASSIST-
 19 ANCE PROGRAMS.—

20 (1) ESTABLISHMENT.—The Secretary of Hous-
 21 ing and Urban Development shall establish a pro-
 22 gram under which the Secretary makes grants to
 23 State housing finance agencies to establish new or
 24 supplement existing programs that provide down

1 payment assistance to families purchasing homes
2 within the State.

3 (2) PRIORITY.—A State housing finance agency
4 that receives a grant under this section shall give
5 priority to families seeking assistance to purchase
6 any single-family residence that is sold or trans-
7 ferred by an applicable taxpayer (as defined in sec-
8 tion 5000G of the Internal Revenue Code of 1986,
9 as added by section 2).

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