

103D CONGRESS
1ST SESSION

S. 353

To provide Alaska Native Corporations, through an election process, standing to contest the disallowance of certain tax losses by the Internal Revenue Service if the purchasers of the losses agree; and to offset any associated revenue losses by increasing the interest rate on certain related tax deficiencies.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4 (legislative day, JANUARY 5), 1993

Mr. STEVENS introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide Alaska Native Corporations, through an election process, standing to contest the disallowance of certain tax losses by the Internal Revenue Service if the purchasers of the losses agree; and to offset any associated revenue losses by increasing the interest rate on certain related tax deficiencies.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 SEC. . STANDING FOR CERTAIN TAXPAYERS WITH RE-

2 GARD TO SALE OF NET OPERATING LOSSES.

3 (a) Subsection (c) of section 5021 of the Technical
4 and Miscellaneous Revenue Act of 1988 (Public Law 100-
5 647) is amended to read as follows:

6 "(c) SPECIAL ADMINISTRATIVE RULES.—

7 "(1) INCOME INCLUDED IN NATIVE CORPORA-
8 TION RETURN.—At the joint election of a Native
9 Corporation and a corporation (referred to in this
10 subsection (c) as the 'buyer corporation') with which
11 the Native Corporation entered into a transaction
12 permitted under section 60(b)(5) of the Tax Reform
13 Act of 1984 and section 1804(e)(4) of the Tax Re-
14 form Act of 1986 (referred to in this subsection (c)
15 as a 'Native Corporation transaction'), income as-
16 signed, transferred or otherwise made available by
17 the buyer corporation through the use of a corpora-
18 tion (referred to in this subsection (c) as the 'profit
19 subsidiary') by reason of such transaction for a pe-
20 riod in which the profit subsidiary qualified as a
21 member of the affiliated group of which the Native
22 Corporation was the common parent shall be in-
23 cluded in the taxable income of the Native Corpora-
24 tion affiliated group solely for purposes of section
25 6212 of the Internal Revenue Code—

1 “(A) ELECTION.—The election under this
2 subsection (c) for the taxable year to which the
3 election relates shall be made no later than 120
4 days after the date of enactment of this amend-
5 ment. The election shall be irrevocable and shall
6 be made by filing with the district director for
7 the Anchorage district office of the Internal
8 Revenue Service a written statement signed by
9 responsible officers of the Native Corporation
10 and the electing buyer corporation that—

11 “(i) identifies the Native Corporation,
12 the profit subsidiary, and the buyer cor-
13 poration (and their taxpayer identification
14 numbers) and states their agreement to
15 make the election provided in this sub-
16 section (c);

17 “(ii) states the amount of income as-
18 signed, transferred or otherwise made
19 available to the profit subsidiary for the
20 taxable year by reason of the Native Cor-
21 poration transaction;

22 “(iii) if profit subsidiaries related to a
23 buyer corporation other than the electing
24 buyer corporation were members of the af-
25 filiated group of which the Native Corpora-

1 the Native Corporation makes the election
2 under this subsection; and

9 If a Native Corporation has engaged in multiple
10 Native Corporation transactions, such election
11 shall be independently made by each buyer cor-
12 poration on separate written statements. A
13 buyer corporation that elects under this provi-
14 sion must so elect for all Native Corporation
15 transactions with the particular Native Cor-
16 poration with whom the election is made for
17 which the statute of limitations for assessment is
18 open.

19 “(B) TAXABLE RATE.—Notwithstanding
20 section 11 of the Internal Revenue Code, any
21 income of the profit subsidiary that is subject
22 to the election provided in this subsection (c)
23 shall be taxed at the rate that such income
24 would have been taxed if it had been included
25 in the return of the buyer corporation for the

1 taxable year from which such income was as-
2 signed, transferred or otherwise made available.

3 Solely for purposes of issuing a notice under
4 section 6212 of the Internal Revenue Code to a
5 Native Corporation for a Native Corporation
6 transaction for which an election has been made
7 under this subsection (c), the tax may be com-
8 puted by applying the maximum corporate rate
9 under section 11 of the Internal Revenue Code.

10 “(2) TREATMENT OF NATIVE CORPORATION AS
11 COMMON PARENT AS SOLE AGENT.—The common
12 parent of an affiliated group which includes a Native
13 Corporation that elects under subsection (c)(1) shall
14 be the sole agent for the profit subsidiary for pur-
15 poses of the Native Corporation transaction for the
16 period of affiliation.

17 “(3) COLLECTION OF TAX FROM BUYER COR-
18 PORATION.—For purposes of this subsection, the
19 amount of any tax, interest, addition to tax, penalty
20 or other amount attributable to the income of the
21 profit subsidiary shall be paid by and be collectible
22 from the profit subsidiary and the buyer corporation
23 for the taxable year for which income was assigned,
24 transferred or otherwise made available by the buyer

1 corporation in connection with the Native Corpora-
2 tion transaction.

3 “(4) PAYMENT OF TAX BY NATIVE CORPORA-
4 TION.—If, after the election provided in subsection
5 (c)(1) is made, the Native Corporation pays all or
6 any part of the tax, interest, addition to tax, penalty
7 or other amount attributable to the income of the
8 profit subsidiary, such payment shall be deemed to
9 be a payment by the buyer corporation for the tax-
10 able year for which such income would otherwise
11 have been included in the buyer corporation’s return
12 if the election provided in subsection (c)(1) was not
13 made—

14 “(A) FILING OF REFUND CLAIM.—A Na-
15 tive Corporation that elects under subsection
16 (c)(1) shall be treated as the taxpayer for pur-
17 poses of sections 6402 and 6511 of the Internal
18 Revenue Code with respect to all payments of
19 tax, interest, additions to tax, penalties, or
20 other amounts attributable to the income of the
21 profit subsidiary and shall be entitled to file a
22 claim for refund as the taxpayer with respect to
23 any taxes, interest, additions to tax, penalties
24 or other amounts attributable to the income of
25 the profit subsidiary.

1 “(B) FILING OF REFUND SUIT.—A Native
2 Corporation that elects under subsection (c)(1)
3 shall be treated as the taxpayer for purposes of
4 section 7422 of the Internal Revenue Code with
5 respect to all payments of tax, interest, addi-
6 tions to tax, penalties, or other amounts attrib-
7 utable to the income of the profit subsidiary,
8 and as the plaintiff for purposes of section
9 1402 of title 28, United States Code, and shall
10 be entitled to file and maintain a proceeding in
11 court as the taxpayer for the recovery of such
12 amounts.

13 “(C) REFUND OF OVERPAYMENT.—In the
14 event that an overpayment is determined to be
15 due, whether by final administrative or judicial
16 decision, with respect to a Native Corporation
17 transaction (c)(1), the Native Corporation shall
18 be treated as the person who made the overpay-
19 ment within the meaning of section 6402(a) of
20 the Internal Revenue Code. Notwithstanding
21 any law or rule of law, including the preceding
22 sentence, any refund of such overpayment may
23 be made jointly to the Native Corporation and
24 to the electing buyer corporation, as agreed to
25 under paragraph (A)(v) of subsection (c)(1).

1 “(5) PARTICIPATORY RIGHTS OF ELECTING
2 BUYER CORPORATION.—Any buyer corporation that
3 makes an election under subsection (c)(1) shall have
4 the right to—

5 “(A) submit a written statement and par-
6 ticipate with the Native Corporation in any ad-
7 ministrative proceeding relating to any proposed
8 adjustment regarding a Native Corporation
9 transaction for which an election has been
10 made; and

11 “(B) file an amicus brief in any proceeding
12 in a Federal court or the United States Tax
13 Court that has been filed by the Native Cor-
14 poration involving a proposed adjustment re-
15 garding such a Native Corporation transaction.

16 All written notices or other reports issued by the
17 Secretary or his delegate with respect to such a Na-
18 tive Corporation transaction shall be issued to the
19 Native Corporation, and it shall be the obligation of
20 the Native Corporation to provide copies thereof to
21 the electing buyer corporation. Rules similar to the
22 rules of subparagraphs (B) and (C) of paragraph (7)
23 shall apply for purposes of this paragraph.

24 “(6) FINAL DETERMINATION OF ISSUES.—

1 “(A) All issues with respect to the Native
2 Corporation transaction with respect to which
3 an election is made under subsection (c)(1), in-
4 cluding the applicability of any interest, addi-
5 tion to tax, penalty or other amount, shall be
6 determined by administrative or judicial deci-
7 sion with respect to the consolidated return of
8 the Native Corporation affiliated group.

9 “(B) Upon such determination, any income
10 of the profit subsidiary that is not offset in the
11 Native Corporation transaction shall be re-
12 ported on the buyer corporation’s return as if
13 it were originally reported thereon and subject
14 to all adjustments, including net operating loss
15 or other carrybacks, to which such income
16 would otherwise be subject.

17 “(7) NO EFFECT ON NONELECTING CORPORA-
18 TIONS.—The absence of an election by a Native Cor-
19 poration and a buyer corporation with respect to a
20 Native Corporation transaction shall not restrict the
21 authority of the Secretary of the Treasury or his
22 delegate to settle or litigate with any nonelecting
23 buyer corporation with respect to any issue relating
24 to such a transaction—

1 “(A) RIGHTS OF NATIVE CORPORATION.—

2 For any such Native Corporation transaction
3 for which no election is made under subsection
4 (c)(1), the Native Corporation shall have the
5 right to submit a written statement and partici-
6 pate with the buyer corporation in any adminis-
7 trative proceeding relating to any proposed ad-
8 justment regarding such Native Corporation
9 transaction; and to file an amicus brief in any
10 proceeding in a Federal court or the United
11 States Tax Court that has been filed by the
12 non-electing buyer corporation involving a pro-
13 posed adjustment regarding such Native Cor-
14 poration transaction.

15 “(B) EXTENSION OF STATUTE OF LIMITA-

16 TIONS.—Subparagraph (A) shall not apply if
17 the Secretary of the Treasury or his delegate
18 determines that an extension of the statute of
19 limitations is necessary to permit the participa-
20 tion described in subparagraph (A) and the tax-
21 payer and the Secretary or his delegate have
22 not agreed to such extension.

23 “(C) FAILURES.—For purposes of the

24 1986 Code, any failure by the Secretary of the
25 Treasury or his delegate to comply with the

1 provisions of this subsection shall not affect the
2 validity of the determination of the Internal
3 Revenue Service of any adjustment of tax liabil-
4 ity of any non-electing buyer corporation.

5 “(8) EFFECTIVE DATE.—This provision shall be
6 effective for all taxable years for which the statute
7 of limitations for assessment with respect to an
8 electing Native Corporation has not expired prior to
9 the date of enactment of this Act—

10 ““(A) EXTENSION OF STATUTE OF LIMITA-
11 TIONS.—Any Native Corporation for which the
12 statute of limitations for assessment will expire
13 within 120 days after the date of enactment of
14 this section shall have the right upon request to
15 extend such statute of limitations pursuant to
16 section 6501(c)(4) of the Internal Revenue
17 Code to a date not less than 120 days after the
18 date of enactment of this section.

19 ““(B) PERIOD FOR ASSESSMENTS.—If the
20 statute of limitations for assessments with re-
21 spect to an electing Native Corporation has not
22 expired prior to the date of the enactment of
23 this Act, such period shall not expire before the
24 date 120 days after the date on which the Na-

1 tive Corporation makes the election under this
2 subsection.”.

3 (b) Section 5021 of the Technical and Miscellaneous
4 Revenue Act of 1988 (Public Law 100-647) is amended
5 by adding, after subsection (e), new subsection (f) to read
6 as follows:

7 “(f) INCREASE IN UNDERPAYMENT RATE.—For pur-
8 poses of determining the amount of interest payable under
9 section 6601 of the Internal Revenue Code on a tax
10 underpayment attributable to a Native Corporation trans-
11 action for which an election has been made under sub-
12 section (c) hereof, the underpayment rate otherwise appli-
13 cable under section 6621(a) (2) or (c) of the Internal Rev-
14 enue Code of 1986 shall be increased by 0.5 percentage
15 points.”.

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