

112TH CONGRESS
1ST SESSION

S. 664

To amend the Internal Revenue Code of 1986 to clarify the capital gain or loss treatment of the sale or exchange of mitigation credits earned by restoring wetlands, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 29, 2011

Ms. LANDRIEU (for herself and Mr. CRAPO) 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 clarify the capital gain or loss treatment of the sale or exchange of mitigation credits earned by restoring wetlands, 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 “Wetlands Conservation
5 Investment Act of 2011”.

1 **SEC. 2. CLARIFICATION OF TREATMENT OF SALES OR EX-**
 2 **CHANGES OF WETLAND MITIGATION CRED-**
 3 **ITS AS LONG-TERM CAPITAL GAIN OR LOSS.**

4 (a) **IN GENERAL.**—Part IV of subchapter P of chap-
 5 ter 1 of the Internal Revenue Code of 1986 is amended
 6 by inserting after section 1257 the following new section:

7 **“SEC. 1257A. GAINS OR LOSSES FROM SALES OR EX-**
 8 **CHANGES OF WETLANDS MITIGATION CRED-**
 9 **ITS.**

10 “(a) **GENERAL RULE.**—Gain or loss attributable to
 11 the sale or exchange of a mitigation bank credit by the
 12 sponsor of the mitigation bank who earned such credit
 13 shall be considered the sale or exchange of a capital asset
 14 held for more than 1 year.

15 “(b) **DEFINITIONS.**—For purposes of this section, the
 16 terms ‘mitigation bank’ and ‘mitigation bank credit’ have
 17 the respective meanings given such terms by part 332 of
 18 title 33 of the Code of Federal Regulations.”.

19 (b) **CLERICAL AMENDMENT.**—The table of sections
 20 for part IV of subchapter P of chapter 1 of the Internal
 21 Revenue Code of 1986 is amended by inserting after the
 22 item relating to section 1257 the following new item:

“Sec. 1257A. Gains or losses from sales or exchanges of wetlands mitigation
 credits.”.

23 (c) **EFFECTIVE DATE.**—The amendments made by
 24 this section shall apply with respect to sales or exchanges

1 of mitigation bank credits occurring before, on, or after
2 the date of enactment of this Act.

3 **SEC. 3. EXEMPTION OF WETLAND MITIGATION CREDIT**
4 **SALES FROM FIRPTA.**

5 (a) **IN GENERAL.**—Section 897(c)(6) of the Internal
6 Revenue Code of 1986 is amended by adding at the end
7 the following new subparagraph:

8 “(D) **EXEMPTION OF WETLAND MITIGA-**
9 **TION CREDIT SALES.**—The term ‘United States
10 real property interest’ does not include any
11 mitigation bank credit (as defined in part 332
12 of title 33 of the Code of Federal Regulations.”.

13 (b) **CONFORMING AMENDMENT.**—Section
14 897(c)(1)(A) of the Internal Revenue Code of 1986 is
15 amended by inserting “and paragraph (6)(C)” after “sub-
16 paragraph (B)”.

17 (c) **EFFECTIVE DATE.**—The amendments made by
18 this section shall apply with respect to sales or exchanges
19 of mitigation bank credits occurring before, on, or after
20 the date of enactment of this Act.

○