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## Income trusts' tax incentive in jeopardy

By David Clarke  
April 9, 2007

OTTAWA — A bill before the U.S. House Ways and Means Committee would remove the tax incentive for Americans to invest in Canadian income trusts.

If the bill were to become law, the distributions from Canadian income trusts would no longer be treated as “qualified foreign dividends” taxed at the preferential rate of 15%. Instead, these distributions would be treated as income and taxed at the full personal-income-tax rate of 35%.

Income trusts pay out profits directly to investors and thus avoid most corporate taxes.

The bill was filed by Rep. Richard E. Neal, D-Mass., March 23, and then referred to the committee. He is chairman of the Ways and Means subcommittee on select revenue.

“If [the new legislation] was passed, there would be a disincentive for U.S. investors to purchase units in Canadian trusts, [real estate investment trusts] and mutual funds,” said Stephen Ruby, a senior tax partner at Toronto-based law firm Davies Wards Phillips & Vineberg LLP. “You’re going to lose all that buying power.”

The bill potentially could remove the tax advantage for Americans to own Canadian income trusts well before the 2011 date when Canada’s new income trust tax would also end the tax benefit for investors (InvestmentNews, March 26).

“Americans own an estimated \$34 billion [U.S.] of Canadian income trusts, and the [U.S. Internal Revenue Service] is forgoing about \$364 million [U.S.] per annum by treating Canadian income trusts distributions as ‘qualified foreign dividends’ rather than income,” said Diane Urquhart, an independent consulting analyst in Mississauga, Ontario.

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