

103^D CONGRESS
2^D SESSION

H. R. 4099

To amend the Internal Revenue Code of 1986 to index the basis of certain assets for purposes of determining gain.

IN THE HOUSE OF REPRESENTATIVES

MARCH 21, 1994

Mr. MORAN introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to index the basis of certain assets for purposes of determining gain.

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. INDEXING OF CERTAIN ASSETS FOR PURPOSES**

4 **OF DETERMINING GAIN.**

5 (a) IN GENERAL.—Part II of subchapter O of chap-
6 ter 1 of the Internal Revenue Code of 1986 (relating to
7 basis rules of general application) is amended by inserting
8 after section 1021 the following new section:

1 **“SEC. 1022. INDEXING OF CERTAIN ASSETS FOR PURPOSES**
2 **OF DETERMINING GAIN.**

3 “(a) GENERAL RULE.—

4 “(1) INDEXED BASIS SUBSTITUTED FOR AD-
5 JUSTED BASIS.—Solely for purposes of determining
6 gain on the sale or other disposition by an individual
7 of an indexed asset which has been held for more
8 than 1 year, the indexed basis of the asset shall be
9 substituted for its adjusted basis.

10 “(2) SPECIAL RULE FOR RECAPTURE GAIN.—

11 “(A) IN GENERAL.—Paragraph (1) shall
12 not apply for purposes of determining the
13 amount of recapture gain on the sale or other
14 disposition of an indexed asset, but the amount
15 of any such recapture gain shall increase the
16 adjusted basis of the asset for purposes of ap-
17 plying paragraph (1) to determine the amount
18 of other gain on such sale or other disposition.

19 “(B) RECAPTURE GAIN.—For purposes of
20 subparagraph (A), the term ‘recapture gain’
21 means any gain treated as ordinary income
22 under section 1245 or 1254 or which would be
23 treated as ordinary income under section 1250
24 if such section applied to all depreciation ad-
25 justments instead of only additional deprecia-
26 tion.

1 “(b) INDEXED ASSET.—

2 “(1) IN GENERAL.—For purposes of this sec-
3 tion, the term ‘indexed asset’ means—

4 “(A) any stock in a corporation, and

5 “(B) any tangible property (or any interest
6 therein),

7 which is a capital asset or property used in the trade
8 or business (as defined in section 1231(b)).

9 “(2) CERTAIN PROPERTY EXCLUDED.—For
10 purposes of this section, the term ‘indexed asset’
11 does not include—

12 “(A) CREDITOR’S INTEREST.—Any interest
13 in property which is in the nature of a credi-
14 tor’s interest.

15 “(B) COLLECTIBLES.—Any collectible (as
16 defined in section 408(m)(2) without regard to
17 section 408(m)(3)).

18 “(C) OPTIONS.—Any option or other right
19 to acquire an interest in property.

20 “(D) NET LEASE PROPERTY.—In the case
21 of a lessor, net lease property (within the mean-
22 ing of subsection (i)(3)).

23 “(E) CERTAIN PREFERRED STOCK.—Stock
24 which is fixed and preferred as to dividends and

1 does not participate in corporate growth to any
2 significant extent.

3 “(F) STOCK IN FOREIGN CORPORA-
4 TIONS.—Stock in a foreign corporation.

5 “(G) STOCK IN S CORPORATIONS.—Stock
6 in an S corporation.

7 “(3) EXCEPTION FOR STOCK IN FOREIGN COR-
8 PORATION WHICH IS REGULARLY TRADED ON NA-
9 TIONAL OR REGIONAL EXCHANGE.—Paragraph
10 (2)(F) shall not apply to stock in a foreign corpora-
11 tion the stock of which is listed on the New York
12 Stock Exchange, the American Stock Exchange, or
13 any domestic regional exchange for which quotations
14 are published on a regular basis or is authorized for
15 trading on the national market system operated by
16 the National Association of Securities Dealers other
17 than—

18 “(A) stock of a foreign investment com-
19 pany (within the meaning of section 1246(b)),

20 “(B) stock in a passive foreign investment
21 company (as defined in section 1296), and

22 “(C) stock in a foreign corporation held by
23 a United States person who meets the require-
24 ments of section 1248(a)(2).

1 “(c) INDEXED BASIS.—For purposes of this sec-
2 tion—

3 “(1) INDEXED BASIS.—The indexed basis for
4 any asset is—

5 “(A) the adjusted basis of the asset, multi-
6 plied by

7 “(B) the applicable inflation ratio.

8 “(2) APPLICABLE INFLATION RATIO.—The ap-
9 plicable inflation ratio for any asset shall be deter-
10 mined by dividing—

11 “(A) the CPI for the calendar year preced-
12 ing the calendar year in which the disposition
13 takes place, by

14 “(B) the CPI for the calendar year preced-
15 ing the calendar year in which the taxpayer’s
16 holding period for such asset began (or, if later,
17 for calendar year 1992).

18 The applicable inflation ratio shall not be taken into
19 account unless it is greater than 1. The applicable
20 inflation ratio for any asset shall be rounded to the
21 nearest one-hundredth.

22 “(3) CONVENTIONS.—For purposes of para-
23 graph (2), if any asset is disposed of during any cal-
24 endar year—

1 “(A) such disposition shall be treated as
2 occurring on the last day of such calendar year,
3 and

4 “(B) the taxpayer’s holding period for such
5 asset shall be treated as beginning in the same
6 calendar year as would be determined for an
7 asset actually disposed of on such last day with
8 a holding period of the same length as the ac-
9 tual holding period of the asset involved.

10 “(4) CPI.—For purposes of this subsection, the
11 CPI for any calendar year shall be determined under
12 section 1(f)(4).

13 “(d) SHORT SALES.—

14 “(1) IN GENERAL.—In the case of a short sale
15 of an indexed asset with a short sale period in excess
16 of 1 year, for purposes of this title, the amount real-
17 ized shall be an amount equal to the amount realized
18 (determined without regard to this paragraph) mul-
19 tiplied by the applicable inflation ratio. In applying
20 subsection (c)(2) for purposes of the preceding sen-
21 tence, the date on which the property is sold short
22 shall be treated as the date on which the holding pe-
23 riod for the asset begins and the closing date for the
24 sale shall be treated as the date of disposition.

1 “(2) SHORT SALE OF SUBSTANTIALLY IDEN-
2 TICAL PROPERTY.—If the taxpayer or the taxpayer’s
3 spouse sells short property substantially identical to
4 an asset held by the taxpayer, the asset held by the
5 taxpayer and the substantially identical property
6 shall not be treated as indexed assets for the short
7 sale period.

8 “(3) SHORT SALE PERIOD.—For purposes of
9 this subsection, the short sale period begins on the
10 day after property is sold and ends on the closing
11 date for the sale.

12 “(e) TREATMENT OF REGULATED INVESTMENT
13 COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—

14 “(1) ADJUSTMENTS AT ENTITY LEVEL.—

15 “(A) IN GENERAL.—Except as otherwise
16 provided in this paragraph, the adjustment
17 under subsection (a) shall be allowed to any
18 qualified investment entity (including for pur-
19 poses of determining the earnings and profits of
20 such entity).

21 “(B) EXCEPTION FOR CORPORATE SHARE-
22 HOLDERS.—Under regulations—

23 “(i) in the case of a distribution by a
24 qualified investment entity (directly or in-
25 directly) to a corporation—

1 “(I) the determination of whether
2 such distribution is a dividend shall be
3 made without regard to this section,
4 and

5 “(II) the amount treated as gain
6 by reason of the receipt of any capital
7 gain dividend shall be increased by the
8 percentage by which the entity’s net
9 capital gain for the taxable year deter-
10 mined without regard to this section
11 exceeds the entity’s net capital gain
12 for such year determined with regard
13 to this section, and

14 “(ii) there shall be other appropriate
15 adjustments (including deemed distribu-
16 tions) so as to ensure that the benefits of
17 this section are not allowed (directly or in-
18 directly) to corporate shareholders of quali-
19 fied investment entities.

20 For purposes of the preceding sentence, any
21 amount includible in gross income under section
22 852(b)(3)(D) shall be treated as a capital gain
23 dividend and an S corporation shall not be
24 treated as a corporation.

1 “(C) EXCEPTION FOR QUALIFICATION
2 PURPOSES.—This section shall not apply for
3 purposes of sections 851(b) and 856(c).

4 “(D) EXCEPTION FOR CERTAIN TAXES IM-
5 POSED AT ENTITY LEVEL.—

6 “(i) TAX ON FAILURE TO DISTRIBUTE
7 ENTIRE GAIN.—If any amount is subject to
8 tax under section 852(b)(3)(A) for any
9 taxable year, the amount on which tax is
10 imposed under such section shall be in-
11 creased by the percentage determined
12 under subparagraph (B)(i)(II). A similar
13 rule shall apply in the case of any amount
14 subject to tax under paragraph (2) or (3)
15 of section 857(b) to the extent attributable
16 to the excess of the net capital gain over
17 the deduction for dividends paid deter-
18 mined with reference to capital gain divi-
19 dends only. The first sentence of this
20 clause shall not apply to so much of the
21 amount subject to tax under section
22 852(b)(3)(A) as is designated by the com-
23 pany under section 852(b)(3)(D).

24 “(ii) OTHER TAXES.—This section
25 shall not apply for purposes of determining

1 the amount of any tax imposed by para-
2 graph (4), (5), or (6) of section 857(b).

3 “(2) ADJUSTMENTS TO INTERESTS HELD IN
4 ENTITY.—

5 “(A) IN GENERAL.—Stock in a qualified
6 investment entity shall be an indexed asset for
7 any calendar month in the same ratio as the
8 fair market value of the assets held by such en-
9 tity at the close of such month which are in-
10 dexed assets bears to the fair market value of
11 all assets of such entity at the close of such
12 month.

13 “(B) RATIO OF 90 PERCENT OR MORE.—If
14 the ratio for any calendar month determined
15 under subparagraph (A) would (but for this
16 subparagraph) be 90 percent or more, such
17 ratio for such month shall be 100 percent.

18 “(C) RATIO OF 10 PERCENT OR LESS.—If
19 the ratio for any calendar month determined
20 under subparagraph (A) would (but for this
21 subparagraph) be 10 percent or less, such ratio
22 for such month shall be zero.

23 “(D) VALUATION OF ASSETS IN CASE OF
24 REAL ESTATE INVESTMENT TRUSTS.—Nothing
25 in this paragraph shall require a real estate in-

1 vestment trust to value its assets more fre-
2 quently than once each 36 months (except
3 where such trust ceases to exist). The ratio
4 under subparagraph (A) for any calendar
5 month for which there is no valuation shall be
6 the trustee's good faith judgment as to such
7 valuation.

8 “(3) QUALIFIED INVESTMENT ENTITY.—For
9 purposes of this subsection, the term ‘qualified in-
10 vestment entity’ means—

11 “(A) a regulated investment company
12 (within the meaning of section 851), and

13 “(B) a real estate investment trust (within
14 the meaning of section 856).

15 “(f) OTHER PASS-THRU ENTITIES.—

16 “(1) PARTNERSHIPS.—

17 “(A) IN GENERAL.—In the case of a part-
18 nership, the adjustment made under subsection
19 (a) at the partnership level shall be passed
20 through to the partners (but only for purposes
21 of determining the income of partners who are
22 individuals).

23 “(B) SPECIAL RULE IN THE CASE OF SEC-
24 TION 754 ELECTIONS.—In the case of a transfer
25 of an interest in a partnership with respect to

1 which the election provided in section 754 is in
2 effect—

3 “(i) the adjustment under section
4 743(b)(1) shall, with respect to the trans-
5 feror partner, be treated as a sale of the
6 partnership assets for purposes of applying
7 this section, and

8 “(ii) with respect to the transferee
9 partner, the partnership’s holding period
10 for purposes of this section in such assets
11 shall be treated as beginning on the date
12 of such adjustment.

13 “(2) S CORPORATIONS.—In the case of an S
14 corporation, the adjustment made under subsection
15 (a) at the corporate level shall be passed through to
16 the shareholders. This section shall not apply for
17 purposes of determining the amount of any tax im-
18 posed by section 1374 or 1375.

19 “(3) COMMON TRUST FUNDS.—In the case of a
20 common trust fund, the adjustment made under sub-
21 section (a) at the trust level shall be passed through
22 to the participants (but only for purposes of deter-
23 mining the income of participants who are individ-
24 uals).

1 “(g) DISPOSITIONS BETWEEN RELATED PERSONS.—

2 This section shall not apply to any sale or other disposition
3 of property between related persons (within the meaning
4 of section 465(b)(3)(C)) if such property, in the hands of
5 the transferee, is of a character subject to the allowance
6 for depreciation provided in section 167.

7 “(h) TRANSFERS TO INCREASE INDEXING ADJUST-

8 MENT.—If any person transfers cash, debt, or any other
9 property to another person and the principal purpose of
10 such transfer is to secure or increase an adjustment under
11 subsection (a), the Secretary may disallow part or all of
12 such adjustment or increase.

13 “(i) SPECIAL RULES.—For purposes of this section—

14 “(1) TREATMENT AS SEPARATE ASSET.—In the
15 case of any asset, the following shall be treated as
16 a separate asset:

17 “(A) A substantial improvement to prop-
18 erty.

19 “(B) In the case of stock of a corporation,
20 a substantial contribution to capital.

21 “(C) Any other portion of an asset to the
22 extent that separate treatment of such portion
23 is appropriate to carry out the purposes of this
24 section.

1 “(2) ASSETS WHICH ARE NOT INDEXED ASSETS
2 THROUGHOUT HOLDING PERIOD.—The applicable in-
3 flation ratio shall be appropriately reduced for peri-
4 ods during which the asset was not an indexed asset.

5 “(3) NET LEASE PROPERTY DEFINED.—The
6 term ‘net lease property’ means leased property
7 where—

8 “(A) the term of the lease (taking into ac-
9 count options to renew) was 50 percent or more
10 of the useful life of the property, and

11 “(B) for the period of the lease, the sum
12 of the deductions with respect to such property
13 which are allowable to the lessor solely by rea-
14 son of section 162 (other than rents and reim-
15 bursed amounts with respect to such property)
16 is 15 percent or less of the rental income pro-
17 duced by such property.

18 “(j) REGULATIONS.—The Secretary shall prescribe
19 such regulations as may be necessary or appropriate to
20 carry out the purposes of this section.”

21 (b) CLERICAL AMENDMENT.—The table of sections
22 for part II of subchapter O of chapter 1 is amended by
23 inserting after the item relating to section 1021 the follow-
24 ing new item:

“Sec. 1022. Indexing of certain assets acquired after 1991 for
purposes of determining gain.”

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to dispositions of any property
3 after the date of the enactment of this Act.

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