

110TH CONGRESS
2D SESSION

S. 3535

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

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 22 (legislative day, SEPTEMBER 17), 2008

Mr. DEMINT introduced the following bill; which was read the first time

A BILL

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

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 OR LOSS.**

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 redesi-
8 gnating section 1023 as section 1024 and by inserting after
9 section 1022 the following new section:

1 **“SEC. 1023. INDEXING OF CERTAIN ASSETS FOR PURPOSES**
2 **OF DETERMINING GAIN OR LOSS.**

3 “(a) GENERAL RULE.—

4 “(1) INDEXED BASIS SUBSTITUTED FOR AD-
5 JUSTED BASIS.—Solely for purposes of determining
6 gain or loss on the sale or other disposition by a tax-
7 payer (other than a corporation) of an indexed asset
8 which has been held for more than 3 years, the in-
9 dexed basis of the asset shall be substituted for its
10 adjusted basis.

11 “(2) EXCEPTION FOR DEPRECIATION, ETC.—

12 The deductions for depreciation, depletion, and am-
13 ortization shall be determined without regard to the
14 application of paragraph (1) to the taxpayer or any
15 other person.

16 “(3) WRITTEN DOCUMENTATION REQUIRE-

17 MENT.—Paragraph (1) shall apply only with respect
18 to indexed assets for which the taxpayer has written
19 documentation of the original purchase price paid or
20 incurred by the taxpayer to acquire such asset.

21 “(b) INDEXED ASSET.—

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

24 “(A) common stock in a C corporation
25 (other than a foreign corporation), or

26 “(B) tangible property,

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

3 “(2) STOCK IN CERTAIN FOREIGN CORPORA-
4 TIONS INCLUDED.—For purposes of this section—

5 “(A) IN GENERAL.—The term ‘indexed
6 asset’ includes common stock in a foreign cor-
7 poration which is regularly traded on an estab-
8 lished securities market.

9 “(B) EXCEPTION.—Subparagraph (A)
10 shall not apply to—

11 “(i) stock of a foreign investment
12 company,

13 “(ii) stock in a passive foreign invest-
14 ment company (as defined in section
15 1296),

16 “(iii) stock in a foreign corporation
17 held by a United States person who meets
18 the requirements of section 1248(a)(2),
19 and

20 “(iv) stock in a foreign personal hold-
21 ing company.

22 “(C) TREATMENT OF AMERICAN DEPOSI-
23 TORY RECEIPTS.—An American depository re-
24 ceipt for common stock in a foreign corporation

1 shall be treated as common stock in such cor-
2 poration.

3 “(c) INDEXED BASIS.—For purposes of this sec-
4 tion—

5 “(1) GENERAL RULE.—The indexed basis for
6 any asset is—

7 “(A) the adjusted basis of the asset, in-
8 creased by

9 “(B) the applicable inflation adjustment.

10 “(2) APPLICABLE INFLATION ADJUSTMENT.—

11 The applicable inflation adjustment for any asset is
12 an amount equal to—

13 “(A) the adjusted basis of the asset, multi-
14 plied by

15 “(B) the percentage (if any) by which—

16 “(i) the gross domestic product
17 deflator for the last calendar quarter end-
18 ing before the asset is disposed of, exceeds

19 “(ii) the gross domestic product
20 deflator for the last calendar quarter end-
21 ing before the asset was acquired by the
22 taxpayer.

23 The percentage under subparagraph (B) shall be
24 rounded to the nearest $\frac{1}{10}$ of 1 percentage point.

1 “(3) GROSS DOMESTIC PRODUCT DEFLATOR.—

2 The gross domestic product deflator for any cal-
3 endar quarter is the implicit price deflator for the
4 gross domestic product for such quarter (as shown
5 in the last revision thereof released by the Secretary
6 of Commerce before the close of the following cal-
7 endar quarter).

8 “(d) SUSPENSION OF HOLDING PERIOD WHERE DI-
9 MINISHED RISK OF LOSS; TREATMENT OF SHORT
10 SALES.—

11 “(1) IN GENERAL.—If the taxpayer (or a re-
12 lated person) enters into any transaction which sub-
13 stantially reduces the risk of loss from holding any
14 asset, such asset shall not be treated as an indexed
15 asset for the period of such reduced risk.

16 “(2) SHORT SALES.—

17 “(A) IN GENERAL.—In the case of a short
18 sale of an indexed asset with a short sale period
19 in excess of 3 years, for purposes of this title,
20 the amount realized shall be an amount equal
21 to the amount realized (determined without re-
22 gard to this paragraph) increased by the appli-
23 cable inflation adjustment. In applying sub-
24 section (c)(2) for purposes of the preceding sen-
25 tence, the date on which the property is sold

1 short shall be treated as the date of acquisition
2 and the closing date for the sale shall be treat-
3 ed as the date of disposition.

4 “(B) SHORT SALE PERIOD.—For purposes
5 of subparagraph (A), the short sale period be-
6 gins on the day that the property is sold and
7 ends on the closing date for the sale.

8 “(e) TREATMENT OF REGULATED INVESTMENT
9 COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—

10 “(1) ADJUSTMENTS AT ENTITY LEVEL.—

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

17 “(B) EXCEPTION FOR CORPORATE SHARE-
18 HOLDERS.—Under regulations—

19 “(i) in the case of a distribution by a
20 qualified investment entity (directly or in-
21 directly) to a corporation—

22 “(I) the determination of whether
23 such distribution is a dividend shall be
24 made without regard to this section,
25 and

1 “(II) the amount treated as gain
2 by reason of the receipt of any capital
3 gain dividend shall be increased by the
4 percentage by which the entity’s net
5 capital gain for the taxable year (de-
6 termined without regard to this sec-
7 tion) exceeds the entity’s net capital
8 gain for such year determined with re-
9 gard to this section, and

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

16 For purposes of the preceding sentence, any
17 amount includible in gross income under section
18 852(b)(3)(D) shall be treated as a capital gain
19 dividend and an S corporation shall not be
20 treated as a corporation.

21 “(C) EXCEPTION FOR QUALIFICATION
22 PURPOSES.—This section shall not apply for
23 purposes of sections 851(b) and 856(e).

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

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

19 “(ii) OTHER TAXES.—This section
20 shall not apply for purposes of determining
21 the amount of any tax imposed by para-
22 graph (4), (5), or (6) of section 857(b).

23 “(2) ADJUSTMENTS TO INTERESTS HELD IN
24 ENTITY.—

1 “(A) REGULATED INVESTMENT COMPA-
2 NIES.—Stock in a regulated investment com-
3 pany (within the meaning of section 851) shall
4 be an indexed asset for any calendar quarter in
5 the same ratio as—

6 “(i) the average of the fair market
7 values of the indexed assets held by such
8 company at the close of each month during
9 such quarter, bears to

10 “(ii) the average of the fair market
11 values of all assets held by such company
12 at the close of each such month.

13 “(B) REAL ESTATE INVESTMENT
14 TRUSTS.—Stock in a real estate investment
15 trust (within the meaning of section 856) shall
16 be an indexed asset for any calendar quarter in
17 the same ratio as—

18 “(i) the fair market value of the in-
19 dexed assets held by such trust at the close
20 of such quarter, bears to

21 “(ii) the fair market value of all as-
22 sets held by such trust at the close of such
23 quarter.

24 “(C) RATIO OF 80 PERCENT OR MORE.—If
25 the ratio for any calendar quarter determined

1 under subparagraph (A) or (B) would (but for
2 this subparagraph) be 80 percent or more, such
3 ratio for such quarter shall be 100 percent.

4 “(D) RATIO OF 20 PERCENT OR LESS.—If
5 the ratio for any calendar quarter determined
6 under subparagraph (A) or (B) would (but for
7 this subparagraph) be 20 percent or less, such
8 ratio for such quarter shall be zero.

9 “(E) LOOK-THRU OF PARTNERSHIPS.—For
10 purposes of this paragraph, a qualified invest-
11 ment entity which holds a partnership interest
12 shall be treated (in lieu of holding a partnership
13 interest) as holding its proportionate share of
14 the assets held by the partnership.

15 “(3) TREATMENT OF RETURN OF CAPITAL DIS-
16 TRIBUTIONS.—Except as otherwise provided by the
17 Secretary, a distribution with respect to stock in a
18 qualified investment entity which is not a dividend
19 and which results in a reduction in the adjusted
20 basis of such stock shall be treated as allocable to
21 stock acquired by the taxpayer in the order in which
22 such stock was acquired.

23 “(4) QUALIFIED INVESTMENT ENTITY.—For
24 purposes of this subsection, the term ‘qualified in-
25 vestment entity’ means—

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

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

5 “(f) OTHER PASS-THRU ENTITIES.—

6 “(1) PARTNERSHIPS.—

7 “(A) IN GENERAL.—In the case of a part-
8 nership, the adjustment made under subsection
9 (a) at the partnership level shall be passed
10 through to the partners.

11 “(B) SPECIAL RULE IN THE CASE OF SEC-
12 TION 754 ELECTIONS.—In the case of a transfer
13 of an interest in a partnership with respect to
14 which the election provided in section 754 is in
15 effect—

16 “(i) the adjustment under section
17 743(b)(1) shall, with respect to the trans-
18 feror partner, be treated as a sale of the
19 partnership assets for purposes of applying
20 this section, and

21 “(ii) with respect to the transferee
22 partner, the partnership’s holding period
23 for purposes of this section in such assets
24 shall be treated as beginning on the date
25 of such adjustment.

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

7 “(3) COMMON TRUST FUNDS.—In the case of a
8 common trust fund, the adjustment made under sub-
9 section (a) at the trust level shall be passed through
10 to the participants.

11 “(4) INDEXING ADJUSTMENT DISREGARDED IN
12 DETERMINING LOSS ON SALE OF INTEREST IN ENTI-
13 TY.—Notwithstanding the preceding provisions of
14 this subsection, for purposes of determining the
15 amount of any loss on a sale or exchange of an in-
16 terest in a partnership, S corporation, or common
17 trust fund, the adjustment made under subsection
18 (a) shall not be taken into account in determining
19 the adjusted basis of such interest.

20 “(g) DISPOSITIONS BETWEEN RELATED PERSONS.—

21 “(1) IN GENERAL.—This section shall not apply
22 to any sale or other disposition of property between
23 related persons except to the extent that the basis
24 of such property in the hands of the transferee is a
25 substituted basis.

1 “(2) RELATED PERSONS DEFINED.—For pur-
2 poses of this section, the term ‘related persons’
3 means—

4 “(A) persons bearing a relationship set
5 forth in section 267(b), and

6 “(B) persons treated as single employer
7 under subsection (b) or (c) of section 414.

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

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

15 “(1) TREATMENT OF IMPROVEMENTS, ETC.—If
16 there is an addition to the adjusted basis of any tan-
17 gible property or of any stock in a corporation dur-
18 ing the taxable year by reason of an improvement to
19 such property or a contribution to capital of such
20 corporation—

21 “(A) such addition shall never be taken
22 into account under subsection (e)(1)(A) if the
23 aggregate amount thereof during the taxable
24 year with respect to such property or stock is
25 less than \$1,000, and

1 “(B) such addition shall be treated as a
2 separate asset acquired at the close of such tax-
3 able year if the aggregate amount thereof dur-
4 ing the taxable year with respect to such prop-
5 erty or stock is \$1,000 or more.

6 A rule similar to the rule of the preceding sentence
7 shall apply to any other portion of an asset to the
8 extent that separate treatment of such portion is ap-
9 propriate to carry out the purposes of this section.

10 “(2) ASSETS WHICH ARE NOT INDEXED ASSETS
11 THROUGHOUT HOLDING PERIOD.—The applicable in-
12 flation adjustment shall be appropriately reduced for
13 periods during which the asset was not an indexed
14 asset.

15 “(3) TREATMENT OF CERTAIN DISTRIBUTIONS.—A distribution with respect to stock in a
16 corporation which is not a dividend shall be treated
17 as a disposition.

18 “(4) SECTION CANNOT INCREASE ORDINARY
19 LOSS.—To the extent that (but for this paragraph)
20 this section would create or increase a net ordinary
21 loss to which section 1231(a)(2) applies or an ordi-
22 nary loss to which any other provision of this title
23 applies, such provision shall not apply. The taxpayer
24 shall be treated as having a long-term capital loss in
25

1 an amount equal to the amount of the ordinary loss
2 to which the preceding sentence applies.

3 “(5) ACQUISITION DATE WHERE THERE HAS
4 BEEN PRIOR APPLICATION OF SUBSECTION (a)(1)
5 WITH RESPECT TO THE TAXPAYER.—If there has
6 been a prior application of subsection (a)(1) to an
7 asset while such asset was held by the taxpayer, the
8 date of acquisition of such asset by the taxpayer
9 shall be treated as not earlier than the date of the
10 most recent such prior application.

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

14 (b) CLERICAL AMENDMENT.—The table of sections
15 for part II of subchapter O of chapter 1 of the Internal
16 Revenue Code of 1986 is amended by striking the item
17 relating to section 1023 and by inserting after the item
18 relating to section 1022 the following new item:

“Sec. 1022. Indexing of certain assets for purposes of determining gain or loss.
“Sec. 1023. Cross references.”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to sales and other dispositions of
21 indexed assets after the date of the enactment of this Act,
22 in taxable years ending after such date.

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