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111TH CONGRESS
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H. R. 1159

To amend the Internal Revenue Code of 1986 to provide special rules for investments lost in a fraudulent Ponzi-type scheme.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 2009

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

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A BILL

To amend the Internal Revenue Code of 1986 to provide special rules for investments lost in a fraudulent Ponzi-type scheme.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TREATMENT OF INVESTMENT LOSSES IN FRAUDULENT PONZI-TYPE SCHEME.

(a) IN GENERAL.—Section 165 of the Internal Revenue Code of 1986 (relating to losses) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) TREATMENT OF INVESTMENT LOSSES IN FRAUDULENT PONZI-TYPE SCHEME.—

"(1) IN GENERAL.—If—

"(A) a taxpayer has a loss on an investment in a fraudulent Ponzi-type scheme, and

"(B) the amount of such loss (without taking into account any potential recoveries) can reasonably be estimated as of the close of the taxable year,

then the taxpayer may elect to treat the amount so estimated as a theft loss described in subsection (c)(2) incurred during the taxable year.

"(2) FRAUDULENT PONZI-TYPE SCHEME.—For purposes of this subsection, the term 'fraudulent Ponzi-type scheme' means any fraudulent investment operation which was managed in a manner that provided investors with returns (or purported returns) derived substantially from investments made by other investors rather than from profits.

"(3) TREATMENT OF SUBSEQUENT RECOVERIES.—If the aggregate estimated losses to which an election under paragraph (1) applies with respect to a fraudulent Ponzi-type scheme for all prior taxable years exceeds the aggregate actual losses by reason of a recovery received or accrued during any taxable year, the amount of such recovery shall be included in gross income for such taxable year to the

extent of such excess. Proper adjustments shall be made in the application of the preceding sentence for additional recoveries in subsequent taxable years.

"(4) PERPETRATORS OF FRAUD NOT COVERED.—Paragraph (1) shall not apply to any person who perpetrated the fraud.".

(b) EXTENSION OF NET OPERATING LOSS CARRYBACK PERIOD.—Paragraph (1) of section 172(b) of such Code is amended by adding at the end the following new subparagraph:

"(K) LOSSES ATTRIBUTABLE TO INVESTMENTS IN FRAUDULENT SCHEMES.—

"(i) IN GENERAL.—Subparagraph (A)(i) shall be applied by substituting 'the applicable number of taxable years' for '2 taxable years' with respect to the portion of the net operating loss for the taxable year to which an election under section 165(m) applies.

"(ii) APPLICABLE NUMBER OF TAXABLE YEARS.—For purposes of clause (i), the applicable number of taxable years is any whole number elected by the taxpayer which is more than 2 but not more than the lesser of—

"(I) 10 years, or

"(II) the period that the taxpayer had amounts invested in the scheme to which such election applies.

"(iii) ORDERING RULE.—For purposes of this subparagraph, the portion of the net operating loss for any taxable year which is attributable to a loss to which an election under section 165(m) applies shall be the excess of—

"(I) the net operating loss for such taxable year, over

"(II) the net operating loss for such taxable year determined without regard to the amount allowed as a deduction by reason of an election under section 165(m).

"(iv) COORDINATION WITH PARAGRAPH (2).—For purposes of applying paragraph (2), a loss to which an election under section 165(m) applies for any taxable year shall be treated in a manner similar to the manner in which a specified liability loss is treated.".

(c) WAIVER OF CONTRIBUTION BASE LIMITATION ON CHARITABLE CONTRIBUTIONS.—Subsection (b) of section 170 of such Code is amended by adding at the end the following new paragraph:

"(4) WAIVER OF LIMITATION ON CONTRIBUTIONS TO CHARITIES WITH LOSSES FROM FRAUDULENT PONZI-TYPE SCHEME.—

"(A) IN GENERAL.—Paragraphs (1) and (2) shall not apply to any charity restoration deduction.

"(B) CHARITY RESTORATION DEDUCTION.—

"(i) IN GENERAL.—For purposes of this paragraph, the term 'charity restoration deduction' means the amount of charitable contributions made by the taxpayer during the taxable year to an organization described in subsection (c) which are designated by such organization for purposes of this paragraph.

"(ii) LIMITATION ON AMOUNT DESIGNATED.—The aggregate amount which may be designated by an organization for purposes of this paragraph for all taxable years shall not exceed the aggregate deduc-

tion which would be allowed to such organization under section 165(m) were such organization a taxpayer to which section 165(m) applies.

"(C) OVERALL LIMITATION.—In no event shall the amount allowed as a deduction under this section for the taxable year by reason of this paragraph exceed the excess of the taxpayer's taxable income (determined without regard to this paragraph) for such year over the deduction allowed under this section without regard to this paragraph.".

(d) RESTORATION OF UNIFIED CREDIT IN CERTAIN CASES.—Section 2505 of such Code (relating to unified credit) is amended by adding at the end the following new subsection:

"(d) RESTORATION OF UNIFIED CREDIT IN CERTAIN CASES.—

"(1) IN GENERAL.—If—

"(A) during any preceding calendar year, a taxpayer made a gift of an interest in an investment operation later determined to be a fraudulent Ponzi-type scheme (as defined in section 165(m)(2)),

"(B) the taxpayer reported the amount of such gift on a timely filed return under this chapter, and

"(C) the taxpayer subsequently makes a gift to the donee which received the gift referred to in subparagraph (A),

the amount under subsection (a)(2) for the calendar year in which the gift referred to in subparagraph (C) is made and subsequent calendar years (determined without regard to such gift) shall be reduced by the gift restoration amount.

"(2) GIFT RESTORATION AMOUNT.—For purposes of paragraph (1), the gift restoration amount is the lesser of—

"(A) the amount of credit allowable under this section with respect to the gift described in paragraph (1)(C) (or would be allowable without regard to the limitation in subsection (a)(1)), or

"(B) the amount of credit which would be so allowable with respect to a gift equal to the amount of the donee's loss on such interest (without taking into account any potential recoveries) which can reasonably be estimated as

of the close of the calendar year in which the gift described in paragraph (1)(C) was made.

"(3) ADJUSTMENTS.—Proper adjustments shall be made in the application of paragraph (2) with respect to gifts and recoveries in subsequent calendar years.".

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years ending during 2008 or thereafter.

(2) GIFT TREATMENT.—The amendment made by subsection (d) shall apply to gifts referred to in section 2505(d)(1)(C) of the Internal Revenue Code of 1986 (as added by this section) made after December 31, 2008.

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