

103^D CONGRESS
2^D SESSION

H. R. 5202

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

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 6, 1994

Mr. WYDEN 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 capital 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. SHORT TITLE.**

4 This Act may be cited as the “Family Savings and
5 Investors Protection Act of 1994”.

6 **SEC. 2. INDEXING OF CERTAIN ASSETS FOR PURPOSES OF**
7 **DETERMINING GAIN OR LOSS.**

8 (a) IN GENERAL.—Part II of subchapter O of chap-
9 ter 1 of the Internal Revenue Code of 1986 (relating to

1 basis rules of general application) is amended by inserting
2 after section 1021 the following new section:

3 **“SEC. 1022. INDEXING OF CERTAIN ASSETS FOR PURPOSES**
4 **OF DETERMINING GAIN OR LOSS.**

5 “(a) GENERAL RULE.—

6 “(1) INDEXED BASIS SUBSTITUTED FOR AD-
7 JUSTED BASIS.—Except as otherwise provided in
8 this subsection, if an indexed asset which has been
9 held for more than 1 year is sold or otherwise dis-
10 posed of, for purposes of this title the indexed basis
11 of the asset shall be substituted for its adjusted
12 basis.

13 “(2) EXCEPTION FOR DEPRECIATION, ETC.—
14 The deduction for depreciation, depletion, and amor-
15 tization shall be determined without regard to the
16 application of paragraph (1) to the taxpayer or any
17 other person.

18 “(b) INDEXED ASSET.—

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

21 “(A) stock in a corporation, and

22 “(B) tangible property (or any interest
23 therein),

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

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

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

7 “(B) OPTIONS.—Any option or other right
8 to acquire an interest in property.

9 “(C) NET LEASE PROPERTY.—In the case
10 of a lessor, net lease property (within the mean-
11 ing of subsection (i)(3)).

12 “(D) CERTAIN PREFERRED STOCK.—Stock
13 which is fixed and preferred as to dividends and
14 does not participate in corporate growth to any
15 significant extent.

16 “(E) STOCK IN FOREIGN CORPORA-
17 TIONS.—Stock in a foreign corporation.

18 “(F) STOCK IN S CORPORATIONS.—Stock
19 in an S corporation.

20 “(3) EXCEPTION FOR STOCK IN FOREIGN COR-
21 PORATION WHICH IS REGULARLY TRADED ON NA-
22 TIONAL OR REGIONAL EXCHANGE.—Paragraph
23 (2)(E) shall not apply to stock in a foreign corpora-
24 tion the stock of which is listed on the New York
25 Stock Exchange, the American Stock Exchange, the

1 national market system operated by the National As-
2 sociation of Securities Dealers, or any domestic re-
3 gional exchange for which quotations are published
4 on a regular basis other than—

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

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

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

12 “(c) INDEXED BASIS.—For purposes of this section:

13 “(1) GENERAL RULE.—Except as provided in
14 paragraph (2), the indexed basis for any asset is—

15 “(A) the adjusted basis of the asset, multi-
16 plied by

17 “(B) the applicable inflation ratio.

18 “(2) APPLICABLE INFLATION RATIO.—The ap-
19 plicable inflation ratio for any asset is the percent-
20 age arrived at by dividing—

21 “(A) the gross national product deflator
22 the calendar quarter in which the disposition
23 takes place, by

24 “(B) the gross national product deflator
25 for the calendar quarter in which the asset was

1 acquired by the taxpayer (or, if later, the cal-
2 endar quarter ending on December 31, 1994).
3 The applicable inflation ratio shall not be taken into
4 account unless it is greater than 1. The applicable
5 inflation ratio for any asset shall be rounded to the
6 nearest one-tenth of 1 percent.

7 “(3) GROSS NATIONAL PRODUCT DEFLATOR.—
8 The gross national product deflator for any calendar
9 quarter is the implicit price deflator for the gross
10 national product for such quarter (as shown in the
11 first revision thereof).

12 “(d) SHORT SALES.—

13 “(1) IN GENERAL.—In the case of a short sale
14 of an indexed asset with a short sale period in excess
15 of 1 year, for purposes of this title, the amount real-
16 ized shall be an amount equal to the amount realized
17 (determined without regard to this paragraph) mul-
18 tiplied by the applicable inflation ratio. In applying
19 subsection (c)(3) for purposes of the preceding sen-
20 tence, the date on which the property is sold short
21 shall be treated as the date on which the holding pe-
22 riod for the asset begins and the closing date for the
23 sale shall be treated as the date of disposition.

24 “(2) SHORT SALE OF SUBSTANTIALLY IDEN-
25 TICAL PROPERTY.—If the taxpayer or the taxpayer’s

1 spouse sells short property substantially identical to
2 an asset held by the taxpayer, the asset held by the
3 taxpayer and the substantially identical property
4 shall not be treated as indexed assets for the short
5 sale period.

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

10 “(e) TREATMENT OF REGULATED INVESTMENT
11 COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—

12 “(1) ADJUSTMENTS AT ENTITY LEVEL.—

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

19 “(B) EXCEPTION FOR QUALIFICATION
20 PURPOSES.—This section shall not apply for
21 purposes of sections 851(b) and 856(c).

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

24 “(A) IN GENERAL.—Stock in a qualified
25 investment entity shall be an indexed asset for

1 any calendar month in the same ratio as the
2 fair market value of the assets held by such en-
3 tity at the close of such month which are in-
4 dexed assets bears to the fair market value of
5 all assets of such entity at the close of such
6 month.

7 “(B) RATIO OF 90 PERCENT OR MORE.—If
8 the ratio for any calendar month determined
9 under subparagraph (A) would (but for this
10 subparagraph) be 90 percent or more, such
11 ratio for such month shall be 100 percent.

12 “(C) RATIO OF 10 PERCENT OR LESS.—If
13 the ratio for any calendar month determined
14 under subparagraph (A) would (but for this
15 subparagraph) be 10 percent or less, such ratio
16 for such month shall be zero.

17 “(D) VALUATION OF ASSETS IN CASE OF
18 REAL ESTATE INVESTMENT TRUSTS.—Nothing
19 in this paragraph shall require a real estate in-
20 vestment trust to value its assets more fre-
21 quently than once each 36 months (except
22 where such trust ceases to exist). The ratio
23 under subparagraph (A) for any calendar
24 month for which there is no valuation shall be

1 the trustee's good faith judgment as to such
2 valuation.

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

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

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

10 “(f) OTHER PASS-THRU ENTITIES.—

11 “(1) PARTNERSHIPS.—

12 “(A) IN GENERAL.—In the case of a part-
13 nership, the adjustment made under subsection
14 (a) at the partnership level shall be passed
15 through to the partners.

16 “(B) SPECIAL RULE IN THE CASE OF SEC-
17 TION 754 ELECTIONS.—In the case of a transfer
18 of an interest in a partnership with respect to
19 which the election provided in section 754 is in
20 effect—

21 “(i) the adjustment under section
22 743(b)(1) shall, with respect to the trans-
23 feror partner, be treated as a sale of the
24 partnership assets for purposes of applying
25 this section, and

1 “(ii) with respect to the transferee
2 partner, the partnership’s holding period
3 for purposes of this section in such assets
4 shall be treated as beginning on the date
5 of such adjustment.

6 “(2) S CORPORATIONS.—In the case of an S
7 corporation, the adjustment made under subsection
8 (a) at the corporate level shall be passed through to
9 the shareholders.

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

14 “(g) DISPOSITIONS BETWEEN RELATED PERSONS.—

15 “(1) IN GENERAL.—This section shall not apply
16 to any sale or other disposition of property between
17 related persons except to the extent that the basis
18 of such property in the hands of the transferee is a
19 substituted basis.

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

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

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

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

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

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

13 “(A) A substantial improvement to prop-
14 erty.

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

17 “(C) Any other portion of an asset to the
18 extent that separate treatment of such portion
19 is appropriate to carry out the purposes of this
20 section.

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

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

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

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

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

18 “(5) 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

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

3 “(6) 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 “(7) COLLAPSIBLE CORPORATIONS.—The appli-
12 cation of section 341(a) (relating to collapsible cor-
13 porations) shall be determined without regard to this
14 section.

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

18 (b) CLERICAL AMENDMENT.—The table of sections
19 for part II of subchapter O of chapter 1 of such Code
20 is amended by inserting after the item relating to section
21 1021 the following new item:

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

22 (c) ADJUSTMENT TO APPLY FOR PURPOSES OF DE-
23 TERMINING EARNINGS AND PROFITS.—Subsection (f) of
24 section 312 of such Code (relating to effect on earnings

1 and profits of gain or loss and of receipt of tax-free dis-
2 tributions) is amended by adding at the end thereof the
3 following new paragraph:

4 “(3) EFFECT ON EARNINGS AND PROFITS OF
5 INDEXED BASIS.—

**For substitution of indexed basis for adjusted
basis in the case of the disposition of certain assets,
see section 1022(a)(1).”**

6 (d) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to dispositions after December 31,
8 1994, in taxable years ending after such date.

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