

109TH CONGRESS
2D SESSION

H. R. 6057

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 12, 2006

Mr. PENCE (for himself and Mr. CANTOR) 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 provide for the indexing of 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 (relating to basis rules of general application) is
7 amended by redesignating section 1023 as section 1024
8 and by inserting after section 1022 the following new sec-
9 tion:

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 “(b) INDEXED ASSET.—

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

19 “(A) common stock in a C corporation
20 (other than a foreign corporation), and

21 “(B) tangible property,
22 which is a capital asset or property used in the trade
23 or business (as defined in section 1231(b)).

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

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

5 “(B) EXCEPTION.—Subparagraph (A)
6 shall not apply to—

7 “(i) stock of a foreign investment
8 company,

9 “(ii) stock in a passive foreign invest-
10 ment company (as defined in section
11 1296),

12 “(iii) stock in a foreign corporation
13 held by a United States person who meets
14 the requirements of section 1248(a)(2),
15 and

16 “(iv) stock in a foreign personal hold-
17 ing company.

18 “(C) TREATMENT OF AMERICAN DEPOSI-
19 TORY RECEIPTS.—An American depository re-
20 ceipt for common stock in a foreign corporation
21 shall be treated as common stock in such cor-
22 poration.

23 “(c) INDEXED BASIS.—For purposes of this sec-
24 tion—

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

3 “(A) the adjusted basis of the asset, in-
4 creased by

5 “(B) the applicable inflation adjustment.

6 “(2) APPLICABLE INFLATION ADJUSTMENT.—
7 The applicable inflation adjustment for any asset is
8 an amount equal to—

9 “(A) the adjusted basis of the asset, multi-
10 plied by

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

12 “(i) the gross domestic product
13 deflator for the last calendar quarter end-
14 ing before the asset is disposed of, exceeds

15 “(ii) the gross domestic product
16 deflator for the last calendar quarter end-
17 ing before the asset was acquired by the
18 taxpayer.

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

21 “(3) GROSS DOMESTIC PRODUCT DEFLATOR.—

22 The gross domestic product deflator for any cal-
23 endar quarter is the implicit price deflator for the
24 gross domestic product for such quarter (as shown
25 in the last revision thereof released by the Secretary

1 of Commerce before the close of the following cal-
2 endar quarter).

3 “(d) SUSPENSION OF HOLDING PERIOD WHERE DI-
4 MINISHED RISK OF LOSS; TREATMENT OF SHORT
5 SALES.—

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

11 “(2) SHORT SALES.—

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

24 “(B) SHORT SALE PERIOD.—For purposes
25 of subparagraph (A), the short sale period be-

1 gins on the day that the property is sold and
2 ends on the closing date for the sale.

3 “(e) TREATMENT OF REGULATED INVESTMENT
4 COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—

5 “(1) ADJUSTMENTS AT ENTITY LEVEL.—

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

12 “(B) EXCEPTION FOR CORPORATE SHARE-
13 HOLDERS.—Under regulations—

14 “(i) in the case of a distribution by a
15 qualified investment entity (directly or in-
16 directly) to a corporation—

17 “(I) the determination of whether
18 such distribution is a dividend shall be
19 made without regard to this section,
20 and

21 “(II) the amount treated as gain
22 by reason of the receipt of any capital
23 gain dividend shall be increased by the
24 percentage by which the entity’s net
25 capital gain for the taxable year (de-

1 terminated without regard to this sec-
2 tion) exceeds the entity's net capital
3 gain for such year determined with re-
4 gard to this section, and

5 “(ii) there shall be other appropriate
6 adjustments (including deemed distribu-
7 tions) so as to ensure that the benefits of
8 this section are not allowed (directly or in-
9 directly) to corporate shareholders of quali-
10 fied investment entities.

11 For purposes of the preceding sentence, any
12 amount includible in gross income under section
13 852(b)(3)(D) shall be treated as a capital gain
14 dividend and an S corporation shall not be
15 treated as a corporation.

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

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

21 “(i) TAX ON FAILURE TO DISTRIBUTE
22 ENTIRE GAIN.—If any amount is subject to
23 tax under section 852(b)(3)(A) for any
24 taxable year, the amount on which tax is
25 imposed under such section shall be in-

1 creased by the percentage determined
2 under subparagraph (B)(i)(II). A similar
3 rule shall apply in the case of any amount
4 subject to tax under paragraph (2) or (3)
5 of section 857(b) to the extent attributable
6 to the excess of the net capital gain over
7 the deduction for dividends paid deter-
8 mined with reference to capital gain divi-
9 dends only. The first sentence of this
10 clause shall not apply to so much of the
11 amount subject to tax under section
12 852(b)(3)(A) as is designated by the com-
13 pany under section 852(b)(3)(D).

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

18 “(2) ADJUSTMENTS TO INTERESTS HELD IN
19 ENTITY.—

20 “(A) REGULATED INVESTMENT COMPA-
21 NIES.—Stock in a regulated investment com-
22 pany (within the meaning of section 851) shall
23 be an indexed asset for any calendar quarter in
24 the same ratio as—

1 “(i) the average of the fair market
2 values of the indexed assets held by such
3 company at the close of each month during
4 such quarter, bears to

5 “(ii) the average of the fair market
6 values of all assets held by such company
7 at the close of each such month.

8 “(B) REAL ESTATE INVESTMENT
9 TRUSTS.—Stock in a real estate investment
10 trust (within the meaning of section 856) shall
11 be an indexed asset for any calendar quarter in
12 the same ratio as—

13 “(i) the fair market value of the in-
14 dexed assets held by such trust at the close
15 of such quarter, bears to

16 “(ii) the fair market value of all as-
17 sets held by such trust at the close of such
18 quarter.

19 “(C) RATIO OF 80 PERCENT OR MORE.—If
20 the ratio for any calendar quarter determined
21 under subparagraph (A) or (B) would (but for
22 this subparagraph) be 80 percent or more, such
23 ratio for such quarter shall be 100 percent.

24 “(D) RATIO OF 20 PERCENT OR LESS.—If
25 the ratio for any calendar quarter determined

1 under subparagraph (A) or (B) would (but for
2 this subparagraph) be 20 percent or less, such
3 ratio for such quarter shall be zero.

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

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

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

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

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

25 “(f) OTHER PASS-THRU ENTITIES.—

1 “(1) PARTNERSHIPS.—

2 “(A) IN GENERAL.—In the case of a part-
3 nership, the adjustment made under subsection
4 (a) at the partnership level shall be passed
5 through to the partners.

6 “(B) SPECIAL RULE IN THE CASE OF SEC-
7 TION 754 ELECTIONS.—In the case of a trans-
8 fer of an interest in a partnership with respect
9 to which the election provided in section 754 is
10 in effect—

11 “(i) the adjustment under section
12 743(b)(1) shall, with respect to the trans-
13 feror partner, be treated as a sale of the
14 partnership assets for purposes of applying
15 this section, and

16 “(ii) with respect to the transferee
17 partner, the partnership’s holding period
18 for purposes of this section in such assets
19 shall be treated as beginning on the date
20 of such adjustment.

21 “(2) S CORPORATIONS.—In the case of an S
22 corporation, the adjustment made under subsection
23 (a) at the corporate level shall be passed through to
24 the shareholders. This section shall not apply for

1 purposes of determining the amount of any tax im-
2 posed by section 1374 or 1375.

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

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

16 “(g) DISPOSITIONS BETWEEN RELATED PERSONS.—

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

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

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

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

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

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

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

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

23 “(B) such addition shall be treated as a
24 separate asset acquired at the close of such tax-
25 able year if the aggregate amount thereof dur-

1 ing the taxable year with respect to such prop-
2 erty or stock is \$1,000 or more.

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

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

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

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

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

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

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

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

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

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to dispositions after December 31,
23 2006, in taxable years ending after such date.

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