

106TH CONGRESS
1ST SESSION

S. 1000

To amend the Internal Revenue Code of 1986 to treat certain dealer derivative financial instruments, hedging transactions, and supplies as ordinary assets.

IN THE SENATE OF THE UNITED STATES

MAY 11, 1999

Mr. BREAUX (for himself and Mr. NICKLES) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to treat certain dealer derivative financial instruments, hedging transactions, and supplies as ordinary assets.

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. TREATMENT OF CERTAIN DEALER DERIVATIVE**
4 **FINANCIAL INSTRUMENTS, HEDGING TRANS-**
5 **ACTIONS, AND SUPPLIES AS ORDINARY AS-**
6 **SETS.**

7 (a) IN GENERAL.—Section 1221 of the Internal Rev-
8 enue Code of 1986 (defining capital assets) is amended—

9 (1) by striking “For purposes” and inserting
10 the following:

1 “(a) IN GENERAL.—For purposes”,

2 (2) by striking the period at the end of para-
3 graph (5) and inserting a semicolon, and

4 (3) by adding at the end the following:

5 “(6) any derivative financial instrument held by
6 a derivatives dealer, unless held for investment and
7 clearly identified in the dealer’s records as held for
8 investment before the close of the day on which it
9 was acquired, originated, or entered into (or such
10 other time as the Secretary may by regulations pre-
11 scribe);

12 “(7) any hedging transaction (as defined in sec-
13 tion 1256(e)(2)); or

14 “(8) supplies of a type regularly used by the
15 taxpayer in the provision of services or the produc-
16 tion of property otherwise described in paragraphs
17 (1) through (7).

18 “(b) DEFINITIONS AND SPECIAL RULES.—

19 “(1) DERIVATIVE FINANCIAL INSTRUMENTS.—
20 For purposes of subsection (a)(6)—

21 “(A) DERIVATIVES DEALER.—The term
22 ‘derivatives dealer’ means a person (other than
23 an options and commodities dealer (within the
24 meaning of section 1402(i)) which regularly of-
25 fers to enter into, assume, offset, assign, or ter-

1 minate positions in derivative financial instru-
2 ments with customers in the ordinary course of
3 a trade or business.

4 “(B) DERIVATIVE FINANCIAL INSTRU-
5 MENT.—

6 “(i) IN GENERAL.—The term ‘deriva-
7 tive financial instrument’ means any con-
8 tract or financial instrument (other than a
9 share of stock in a corporation, a beneficial
10 interest in a partnership or trust, or a
11 note, bond, debenture, or other evidence of
12 indebtedness) the value or settlement price
13 of which is calculated by or determined by
14 reference to a specified index, including
15 any swap, cap, collar, floor, option, futures
16 contract, forward contract, or similar con-
17 tract or financial instrument.

18 “(ii) SPECIFIED INDEX.—The term
19 ‘specified index’ means any one or more or
20 any combination of—

21 “(I) a fixed rate, price, or
22 amount, or

23 “(II) a variable rate, price, or
24 amount,

1 which is based on any current, objectively
2 determinable financial or economic infor-
3 mation which is not within the control of
4 any of the parties to the contract or in-
5 strument and is not unique to any of the
6 parties' circumstances.

7 “(2) TREATMENT OF LOSSES IN CASE OF NON
8 IDENTIFICATION OR IMPROPER IDENTIFICATION OF
9 HEDGING TRANSACTIONS.—Notwithstanding sub-
10 section (a)(7) the Secretary shall prescribe regula-
11 tions for the proper treatment of the character of
12 any gain or loss arising from a transaction—

13 “(A) which is a hedging transaction under
14 section 1256(e)(2) except for the fact it was not
15 identified as such under section 1256(e)(2)(C),
16 or

17 “(B) which was so identified but is not
18 such a hedging transaction.”

19 (b) MANAGEMENT OF RISK.—

20 (1) Section 475(c)(3) of the Internal Revenue
21 Code of 1986 is amended by striking “reduces” and
22 inserting “manages”.

23 (2) Section 871(h)(4)(C)(iv) of such Code is
24 amended by striking “to reduce” and inserting “to
25 manage”.

1 (3) Clauses (i) and (ii) of section 988(d)(2)(A)
2 of such Code are each amended by striking “to re-
3 duce” and inserting “to manage”.

4 (4) Section 1202(j)(2)(C) of such Code is
5 amended by striking “reduces” and inserting “man-
6 ages”.

7 (5) Clauses (i) and (ii) of section 1256(e)(2)(A)
8 of such Code are each amended by striking “to re-
9 duce” and inserting “to manage”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to any instrument held, acquired,
12 or entered into, any transaction entered into, and supplies
13 held or acquired on or after the date of enactment of this
14 Act.

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