

107TH CONGRESS  
2D SESSION

# H. R. 5626

To amend the Internal Revenue Code of 1986 to revise the tax treatment of derivative transactions entered into by a corporation with respect to its stock.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 10, 2002

Mr. NEAL of Massachusetts 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 revise the tax treatment of derivative transactions entered into by a corporation with respect to its stock.

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. REVISION OF TAX TREATMENT OF DERIVATIVE**  
4 **TRANSACTIONS ENTERED INTO BY A COR-**  
5 **PORATION WITH RESPECT TO ITS STOCK.**

6 (a) IN GENERAL.—Section 1032 of the Internal Rev-  
7 enue Code of 1986 (relating to exchange of stock for prop-  
8 erty) is amended to read as follows:

1 **“SEC. 1032. TRANSACTIONS BY A CORPORATION WITH RE-**  
2 **SPECT TO ITS STOCK.**

3 “(a) NONRECOGNITION OF GAIN OR LOSS.—No gain  
4 or loss shall be recognized to a corporation on the receipt  
5 of property (including money) or services in exchange for  
6 stock of such corporation.

7 “(b) TREATMENT OF DERIVATIVE TRANSACTIONS.—

8 “(1) NONRECOGNITION TREATMENT.—

9 “(A) IN GENERAL.—Except as provided in  
10 paragraph (2), section 1032 derivative items of  
11 a corporation shall not be taken into account in  
12 determining such corporation’s liability for tax  
13 under this subtitle.

14 “(B) SECTION 1032 DERIVATIVE ITEMS.—

15 For purposes of subparagraph (A), the term  
16 ‘section 1032 derivative item’ means any item  
17 of income, gain, loss, or deduction if—

18 “(i) such item arises out of the rights  
19 or obligations under any option or forward  
20 or futures contract to the extent such op-  
21 tion or contract relates to the corporation’s  
22 stock (or is attributable to any transfer or  
23 extinguishment of any such right or obliga-  
24 tion), or

25 “(ii) such item arises under any other  
26 contract or position but only to the extent

1           that such item reflects (or is determined by  
2           reference to) changes in the value of such  
3           stock or distributions thereon.

4           Such term shall not include any deduction al-  
5           lowable under section 83 or under section 163  
6           and shall not include any deduction for any  
7           item which is in the nature of compensation for  
8           services rendered. For purposes of this subpara-  
9           graph, de minimis relationships shall be dis-  
10          regarded.

11          “(2) INCOME RECOGNITION ON CERTAIN FOR-  
12          WARD CONTRACTS.—

13               “(A) IN GENERAL.—If—

14                   “(i) a corporation acquires its stock,  
15                   and

16                   “(ii) such acquisition is part of a plan  
17                   (or series of related transactions) pursuant  
18                   to which the corporation enters into a for-  
19                   ward contract with respect to its stock,

20           such corporation shall include amounts in in-  
21           come as if the excess of the amount to be re-  
22           ceived under the forward contract over the fair  
23           market value of the stock as of the date the  
24           corporation entered into the forward contract  
25           were original issue discount on a debt instru-

1           ment acquired on such date. The preceding sen-  
2           tence shall apply only to the extent that the  
3           amount of stock involved in the forward con-  
4           tract does not exceed the amount acquired as  
5           described in clause (i).

6           “(B) PLAN PRESUMED TO EXIST.—If a  
7           corporation enters into a forward contract with  
8           respect to its stock within the 60-day period be-  
9           ginning on the date which is 30 days before the  
10          date that the corporation acquires its stock,  
11          such acquisition shall be treated as pursuant to  
12          a plan described in subparagraph (A)(ii) unless  
13          it is established that entering into such contract  
14          and such acquisition are not pursuant to a plan  
15          or series of related transactions.

16          “(C) FORWARD CONTRACT.—The term  
17          ‘forward contract’ has the meaning given to  
18          such term by section 1259(d)(1); except that  
19          such term shall include any transactions or se-  
20          ries of related transactions having the same ef-  
21          fect as a forward contract (as so defined).

22          “(c) TREASURY STOCK TREATED AS STOCK.—Any  
23          reference in this section to stock shall be treated as includ-  
24          ing a reference to treasury stock.

1       “(d) REGULATIONS.—The Secretary shall prescribe  
2 such regulations as may be appropriate to carry out the  
3 purposes of this section, including regulations which treat  
4 the portion of an instrument which is described in sub-  
5 section (b) separately from the portion of such instrument  
6 which is not so described.

7       “(e) BASIS.—For basis of property acquired by a cor-  
8 poration in certain exchanges for its stock, see section  
9 362.”.

10       (b) CLERICAL AMENDMENT.—The item relating to  
11 section 1032 in the table of sections for part III of sub-  
12 chapter O of chapter 1 of such Code is amended to read  
13 as follows:

“Sec. 1032. Transactions by a corporation with respect to its  
stock.”.

14       (c) EFFECTIVE DATE.—The amendments made by  
15 this section shall apply to transactions entered into after  
16 the date of the enactment of this Act.

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