

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.

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

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-

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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