

## Calendar No. 119

110TH CONGRESS  
2D SESSION**S. 3535**

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

---

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 22 (legislative day, SEPTEMBER 17), 2008

Mr. DEMINT introduced the following bill; which was read the first time

NOVEMBER 18, 2008

Read the second time and placed on the calendar under authority of the order of the Senate of November 17 (legislative day, September 17), 2008

---

**A BILL**

To amend the Internal Revenue Code of 1986 to index 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 of the Internal Revenue Code of 1986 (relating to  
7 basis rules of general application) is amended by redesign-

1 nating section 1023 as section 1024 and by inserting after  
 2 section 1022 the following new section:

3 **“SEC. 1023. 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.—Solely for purposes of determining  
 8 gain or loss on the sale or other disposition by a tax-  
 9 payer (other than a corporation) of an indexed asset  
 10 which has been held for more than 3 years, the in-  
 11 dexed basis of the asset shall be substituted for its  
 12 adjusted basis.

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

18 “(3) WRITTEN DOCUMENTATION REQUIRE-  
 19 MENT.—Paragraph (1) shall apply only with respect  
 20 to indexed assets for which the taxpayer has written  
 21 documentation of the original purchase price paid or  
 22 incurred by the taxpayer to acquire such asset.

23 “(b) INDEXED ASSET.—

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

1           “(A) common stock in a C corporation  
2           (other than a foreign corporation), or

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

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

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

12          “(B) EXCEPTION.—Subparagraph (A)  
13          shall not apply to—

14               “(i) stock of a foreign investment  
15               company,

16               “(ii) stock in a passive foreign invest-  
17               ment company (as defined in section  
18               1296),

19               “(iii) stock in a foreign corporation  
20               held by a United States person who meets  
21               the requirements of section 1248(a)(2),  
22               and

23               “(iv) stock in a foreign personal hold-  
24               ing company.

1           “(C) TREATMENT OF AMERICAN DEPOSI-  
 2           TORY RECEIPTS.—An American depository re-  
 3           ceipt for common stock in a foreign corporation  
 4           shall be treated as common stock in such cor-  
 5           poration.

6           “(c) INDEXED BASIS.—For purposes of this sec-  
 7           tion—

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

10           “(A) the adjusted basis of the asset, in-  
 11           creased by

12           “(B) the applicable inflation adjustment.

13           “(2) APPLICABLE INFLATION ADJUSTMENT.—  
 14           The applicable inflation adjustment for any asset is  
 15           an amount equal to—

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

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

19           “(i) the gross domestic product  
 20           deflator for the last calendar quarter end-  
 21           ing before the asset is disposed of, exceeds

22           “(ii) the gross domestic product  
 23           deflator for the last calendar quarter end-  
 24           ing before the asset was acquired by the  
 25           taxpayer.

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

3               “(3) GROSS DOMESTIC PRODUCT DEFLATOR.—

4       The gross domestic product deflator for any cal-  
5       endar quarter is the implicit price deflator for the  
6       gross domestic product for such quarter (as shown  
7       in the last revision thereof released by the Secretary  
8       of Commerce before the close of the following cal-  
9       endar quarter).

10       “(d) SUSPENSION OF HOLDING PERIOD WHERE DI-  
11       MINISHED RISK OF LOSS; TREATMENT OF SHORT  
12       SALES.—

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

18               “(2) SHORT SALES.—

19               “(A) IN GENERAL.—In the case of a short  
20       sale of an indexed asset with a short sale period  
21       in excess of 3 years, for purposes of this title,  
22       the amount realized shall be an amount equal  
23       to the amount realized (determined without re-  
24       gard to this paragraph) increased by the appli-  
25       cable inflation adjustment. In applying sub-

1 section (c)(2) for purposes of the preceding sen-  
 2 tence, the date on which the property is sold  
 3 short shall be treated as the date of acquisition  
 4 and the closing date for the sale shall be treat-  
 5 ed as the date of disposition.

6 “(B) SHORT SALE PERIOD.—For purposes  
 7 of subparagraph (A), the short sale period be-  
 8 gins on the day that the property is sold and  
 9 ends on the closing 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 CORPORATE SHARE-  
 20 HOLDERS.—Under regulations—

21 “(i) in the case of a distribution by a  
 22 qualified investment entity (directly or in-  
 23 directly) to a corporation—

24 “(I) the determination of whether  
 25 such distribution is a dividend shall be

1 made without regard to this section,  
2 and

3 “(II) the amount treated as gain  
4 by reason of the receipt of any capital  
5 gain dividend shall be increased by the  
6 percentage by which the entity’s net  
7 capital gain for the taxable year (de-  
8 termined without regard to this sec-  
9 tion) exceeds the entity’s net capital  
10 gain for such year determined with re-  
11 gard to this section, and

12 “(ii) there shall be other appropriate  
13 adjustments (including deemed distribu-  
14 tions) so as to ensure that the benefits of  
15 this section are not allowed (directly or in-  
16 directly) to corporate shareholders of quali-  
17 fied investment entities.

18 For purposes of the preceding sentence, any  
19 amount includible in gross income under section  
20 852(b)(3)(D) shall be treated as a capital gain  
21 dividend and an S corporation shall not be  
22 treated as a corporation.

23 “(C) EXCEPTION FOR QUALIFICATION  
24 PURPOSES.—This section shall not apply for  
25 purposes of sections 851(b) and 856(c).

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

3           “(i) TAX ON FAILURE TO DISTRIBUTE  
4           ENTIRE GAIN.—If any amount is subject to  
5           tax under section 852(b)(3)(A) for any  
6           taxable year, the amount on which tax is  
7           imposed under such section shall be in-  
8           creased by the percentage determined  
9           under subparagraph (B)(i)(II). A similar  
10          rule shall apply in the case of any amount  
11          subject to tax under paragraph (2) or (3)  
12          of section 857(b) to the extent attributable  
13          to the excess of the net capital gain over  
14          the deduction for dividends paid deter-  
15          mined with reference to capital gain divi-  
16          dends only. The first sentence of this  
17          clause shall not apply to so much of the  
18          amount subject to tax under section  
19          852(b)(3)(A) as is designated by the com-  
20          pany under section 852(b)(3)(D).

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



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

3           “(A) REGULATED INVESTMENT COMPA-  
4       NIES.—Stock in a regulated investment com-  
5       pany (within the meaning of section 851) shall  
6       be an indexed asset for any calendar quarter in  
7       the same ratio as—

8                   “(i) the average of the fair market  
9                   values of the indexed assets held by such  
10                  company at the close of each month during  
11                  such quarter, bears to

12                   “(ii) the average of the fair market  
13                  values of all assets held by such company  
14                  at the close of each such month.

15           “(B) REAL ESTATE INVESTMENT  
16       TRUSTS.—Stock in a real estate investment  
17       trust (within the meaning of section 856) shall  
18       be an indexed asset for any calendar quarter in  
19       the same ratio as—

20                   “(i) the fair market value of the in-  
21                   dexed assets held by such trust at the close  
22                  of such quarter, bears to

23                   “(ii) the fair market value of all as-  
24                  sets held by such trust at the close of such  
25                  quarter.

1           “(C) RATIO OF 80 PERCENT OR MORE.—If  
2           the ratio for any calendar quarter determined  
3           under subparagraph (A) or (B) would (but for  
4           this subparagraph) be 80 percent or more, such  
5           ratio for such quarter shall be 100 percent.

6           “(D) RATIO OF 20 PERCENT OR LESS.—If  
7           the ratio for any calendar quarter determined  
8           under subparagraph (A) or (B) would (but for  
9           this subparagraph) be 20 percent or less, such  
10          ratio for such quarter shall be zero.

11          “(E) LOOK-THRU OF PARTNERSHIPS.—For  
12          purposes of this paragraph, a qualified invest-  
13          ment entity which holds a partnership interest  
14          shall be treated (in lieu of holding a partnership  
15          interest) as holding its proportionate share of  
16          the assets held by the partnership.

17          “(3) TREATMENT OF RETURN OF CAPITAL DIS-  
18          TRIBUTIONS.—Except as otherwise provided by the  
19          Secretary, a distribution with respect to stock in a  
20          qualified investment entity which is not a dividend  
21          and which results in a reduction in the adjusted  
22          basis of such stock shall be treated as allocable to  
23          stock acquired by the taxpayer in the order in which  
24          such stock was acquired.

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

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

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

8           “(f) OTHER PASS-THRU ENTITIES.—

9                   “(1) PARTNERSHIPS.—

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

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

19                           “(i) the adjustment under section  
 20                           743(b)(1) shall, with respect to the trans-  
 21                           feror partner, be treated as a sale of the  
 22                           partnership assets for purposes of applying  
 23                           this section, and

24                           “(ii) with respect to the transferee  
 25                           partner, the partnership’s holding period

1                   for purposes of this section in such assets  
2                   shall be treated as beginning on the date  
3                   of such adjustment.

4                   “(2) S CORPORATIONS.—In the case of an S  
5                   corporation, the adjustment made under subsection  
6                   (a) at the corporate level shall be passed through to  
7                   the shareholders. This section shall not apply for  
8                   purposes of determining the amount of any tax im-  
9                   posed by section 1374 or 1375.

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

23                  “(g) DISPOSITIONS BETWEEN RELATED PERSONS.—

24                  “(1) IN GENERAL.—This section shall not apply  
25                  to any sale or other disposition of property between

1 related persons except to the extent that the basis  
 2 of such property in the hands of the transferee is a  
 3 substituted basis.

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

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

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

11 “(h) TRANSFERS TO INCREASE INDEXING ADJUST-  
 12 MENT.—If any person transfers cash, debt, or any other  
 13 property to another person and the principal purpose of  
 14 such transfer is to secure or increase an adjustment under  
 15 subsection (a), the Secretary may disallow part or all of  
 16 such adjustment or increase.

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

18 “(1) TREATMENT OF IMPROVEMENTS, ETC.—If  
 19 there is an addition to the adjusted basis of any tan-  
 20 gible property or of any stock in a corporation dur-  
 21 ing the taxable year by reason of an improvement to  
 22 such property or a contribution to capital of such  
 23 corporation—

24 “(A) such addition shall never be taken  
 25 into account under subsection (c)(1)(A) if the

1           aggregate amount thereof during the taxable  
2           year with respect to such property or stock is  
3           less than \$1,000, and

4           “(B) such addition shall be treated as a  
5           separate asset acquired at the close of such tax-  
6           able year if the aggregate amount thereof dur-  
7           ing the taxable year with respect to such prop-  
8           erty or stock is \$1,000 or more.

9           A rule similar to the rule of the preceding sentence  
10          shall apply to any other portion of an asset to the  
11          extent that separate treatment of such portion is ap-  
12          propriate to carry out the purposes of this section.

13          “(2) ASSETS WHICH ARE NOT INDEXED ASSETS  
14          THROUGHOUT HOLDING PERIOD.—The applicable in-  
15          flation adjustment shall be appropriately reduced for  
16          periods during which the asset was not an indexed  
17          asset.

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

22          “(4) SECTION CANNOT INCREASE ORDINARY  
23          LOSS.—To the extent that (but for this paragraph)  
24          this section would create or increase a net ordinary  
25          loss to which section 1231(a)(2) applies or an ordi-

1       nary loss to which any other provision of this title  
 2       applies, such provision shall not apply. The taxpayer  
 3       shall be treated as having a long-term capital loss in  
 4       an amount equal to the amount of the ordinary loss  
 5       to which the preceding sentence applies.

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

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

17       (b) CLERICAL AMENDMENT.—The table of sections  
 18      for part II of subchapter O of chapter 1 of the Internal  
 19      Revenue Code of 1986 is amended by striking the item  
 20      relating to section 1023 and by inserting after the item  
 21      relating to section 1022 the following new item:

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

22       (c) EFFECTIVE DATE.—The amendments made by  
 23      this section shall apply to sales and other dispositions of

- 1 indexed assets after the date of the enactment of this Act,
- 2 in taxable years ending after such date.





Calendar No. 119

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> Session  
**S. 3535**

**A BILL**

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

NOVEMBER 18, 2008

Read the second time and placed on the calendar