

111TH CONGRESS
1ST SESSION

H. R. 1159

To amend the Internal Revenue Code of 1986 to provide special rules for investments lost in a fraudulent Ponzi-type scheme.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 2009

Mr. MEEK of Florida 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 special rules for investments lost in a fraudulent Ponzi-type scheme.

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 INVESTMENT LOSSES IN**
4 **FRAUDULENT PONZI-TYPE SCHEME.**

5 (a) IN GENERAL.—Section 165 of the Internal Rev-
6 enue Code of 1986 (relating to losses) is amended by re-
7 designating subsection (m) as subsection (n) and by in-
8 serting after subsection (l) the following new subsection:

9 “(m) TREATMENT OF INVESTMENT LOSSES IN
10 FRAUDULENT PONZI-TYPE SCHEME.—

1 “(1) IN GENERAL.—If—

2 “(A) a taxpayer has a loss on an invest-
3 ment in a fraudulent Ponzi-type scheme, and

4 “(B) the amount of such loss (without tak-
5 ing into account any potential recoveries) can
6 reasonably be estimated as of the close of the
7 taxable year,

8 then the taxpayer may elect to treat the amount so
9 estimated as a theft loss described in subsection
10 (c)(2) incurred during the taxable year.

11 “(2) FRAUDULENT PONZI-TYPE SCHEME.—For
12 purposes of this subsection, the term ‘fraudulent
13 Ponzi-type scheme’ means any fraudulent investment
14 operation which was managed in a manner that pro-
15 vided investors with returns (or purported returns)
16 derived substantially from investments made by
17 other investors rather than from profits.

18 “(3) TREATMENT OF SUBSEQUENT RECOV-
19 ERIES.—If the aggregate estimated losses to which
20 an election under paragraph (1) applies with respect
21 to a fraudulent Ponzi-type scheme for all prior tax-
22 able years exceeds the aggregate actual losses by
23 reason of a recovery received or accrued during any
24 taxable year, the amount of such recovery shall be
25 included in gross income for such taxable year to the

1 extent of such excess. Proper adjustments shall be
 2 made in the application of the preceding sentence for
 3 additional recoveries in subsequent taxable years.

4 “(4) PERPETRATORS OF FRAUD NOT COV-
 5 ERED.—Paragraph (1) shall not apply to any person
 6 who perpetrated the fraud.”.

7 (b) EXTENSION OF NET OPERATING LOSS
 8 CARRYBACK PERIOD.—Paragraph (1) of section 172(b) of
 9 such Code is amended by adding at the end the following
 10 new subparagraph:

11 “(K) LOSSES ATTRIBUTABLE TO INVEST-
 12 MENTS IN FRAUDULENT SCHEMES.—

13 “(i) IN GENERAL.—Subparagraph
 14 (A)(i) shall be applied by substituting ‘the
 15 applicable number of taxable years’ for ‘2
 16 taxable years’ with respect to the portion
 17 of the net operating loss for the taxable
 18 year to which an election under section
 19 165(m) applies.

20 “(ii) APPLICABLE NUMBER OF TAX-
 21 ABLE YEARS.—For purposes of clause (i),
 22 the applicable number of taxable years is
 23 any whole number elected by the taxpayer
 24 which is more than 2 but not more than
 25 the lesser of—

1 “(I) 10 years, or

2 “(II) the period that the taxpayer
3 had amounts invested in the scheme
4 to which such election applies.

5 “(iii) ORDERING RULE.—For pur-
6 poses of this subparagraph, the portion of
7 the net operating loss for any taxable year
8 which is attributable to a loss to which an
9 election under section 165(m) applies shall
10 be the excess of—

11 “(I) the net operating loss for
12 such taxable year, over

13 “(II) the net operating loss for
14 such taxable year determined without
15 regard to the amount allowed as a de-
16 duction by reason of an election under
17 section 165(m).

18 “(iv) COORDINATION WITH PARA-
19 GRAPH (2).—For purposes of applying
20 paragraph (2), a loss to which an election
21 under section 165(m) applies for any tax-
22 able year shall be treated in a manner
23 similar to the manner in which a specified
24 liability loss is treated.”.

1 (c) WAIVER OF CONTRIBUTION BASE LIMITATION ON
2 CHARITABLE CONTRIBUTIONS.—Subsection (b) of section
3 170 of such Code is amended by adding at the end the
4 following new paragraph:

5 “(4) WAIVER OF LIMITATION ON CONTRIBU-
6 TIONS TO CHARITIES WITH LOSSES FROM FRAUDU-
7 LENT PONZI-TYPE SCHEME.—

8 “(A) IN GENERAL.—Paragraphs (1) and
9 (2) shall not apply to any charity restoration
10 deduction.

11 “(B) CHARITY RESTORATION DEDUC-
12 TION.—

13 “(i) IN GENERAL.—For purposes of
14 this paragraph, the term ‘charity restora-
15 tion deduction’ means the amount of chari-
16 table contributions made by the taxpayer
17 during the taxable year to an organization
18 described in subsection (c) which are des-
19 ignated by such organization for purposes
20 of this paragraph.

21 “(ii) LIMITATION ON AMOUNT DES-
22 IGNATED.—The aggregate amount which
23 may be designated by an organization for
24 purposes of this paragraph for all taxable
25 years shall not exceed the aggregate deduc-

tion which would be allowed to such organization under section 165(m) were such organization a taxpayer to which section 165(m) applies.

“(C) OVERALL LIMITATION.—In no event shall the amount allowed as a deduction under this section for the taxable year by reason of this paragraph exceed the excess of the taxpayer’s taxable income (determined without regard to this paragraph) for such year over the deduction allowed under this section without regard to this paragraph.”.

(d) RESTORATION OF UNIFIED CREDIT IN CERTAIN CASES.—Section 2505 of such Code (relating to unified credit) is amended by adding at the end the following new subsection:

“(d) RESTORATION OF UNIFIED CREDIT IN CERTAIN CASES.—

“(1) IN GENERAL.—If—

“(A) during any preceding calendar year, a taxpayer made a gift of an interest in an investment operation later determined to be a fraudulent Ponzi-type scheme (as defined in section 165(m)(2)),

1 “(B) the taxpayer reported the amount of
2 such gift on a timely filed return under this
3 chapter, and

4 “(C) the taxpayer subsequently makes a
5 gift to the donee which received the gift re-
6 ferred to in subparagraph (A),
7 the amount under subsection (a)(2) for the calendar
8 year in which the gift referred to in subparagraph
9 (C) is made and subsequent calendar years (deter-
10 mined without regard to such gift) shall be reduced
11 by the gift restoration amount.

12 “(2) GIFT RESTORATION AMOUNT.—For pur-
13 poses of paragraph (1), the gift restoration amount
14 is the lesser of—

15 “(A) the amount of credit allowable under
16 this section with respect to the gift described in
17 paragraph (1)(C) (or would be allowable with-
18 out regard to the limitation in subsection
19 (a)(1)), or

20 “(B) the amount of credit which would be
21 so allowable with respect to a gift equal to the
22 amount of the donee’s loss on such interest
23 (without taking into account any potential re-
24 coveries) which can reasonably be estimated as

1 of the close of the calendar year in which the
2 gift described in paragraph (1)(C) was made.

3 “(3) ADJUSTMENTS.—Proper adjustments shall
4 be made in the application of paragraph (2) with re-
5 spect to gifts and recoveries in subsequent calendar
6 years.”.

7 (e) EFFECTIVE DATES.—

8 (1) IN GENERAL.—Except as provided in para-
9 graph (2), the amendments made by this section
10 shall apply to taxable years ending during 2008 or
11 thereafter.

12 (2) GIFT TREATMENT.—The amendment made
13 by subsection (d) shall apply to gifts referred to in
14 section 2505(d)(1)(C) of the Internal Revenue Code
15 of 1986 (as added by this section) made after De-
16 cember 31, 2008.

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