

111TH CONGRESS  
2D SESSION

# H. R. 5058

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

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 15, 2010

Mr. PASCRELL (for himself, Mr. WEINER, and Ms. ROS-LEHTINEN) 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 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. SHORT TITLE.**

4 This Act may be cited as the “Ponzi Scheme Victims’  
5 Tax Relief Act of 2010”.

6 **SEC. 2. LOSS TREATMENT OF INVESTMENT LOSSES IN**  
7 **FRAUDULENT PONZI-TYPE SCHEME.**

8 (a) IN GENERAL.—Section 165 of the Internal Rev-  
9 enue Code of 1986 is amended by redesignating subsection

1 (m) as subsection (n) and by inserting after subsection  
 2 (l) the following new subsection:

3 “(m) SPECIAL RULES FOR QUALIFIED FRAUDULENT  
 4 INVESTMENT LOSSES IN INDIVIDUAL RETIREMENT AC-  
 5 COUNTS.—

6 “(1) IN GENERAL.—If—

7 “(A) a taxpayer has qualified fraudulent  
 8 investment loss, and

9 “(B) the amount of such loss (without tak-  
 10 ing into account any potential recoveries) can  
 11 reasonably be estimated as of the close of the  
 12 taxable year,

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

16 “(2) SPECIAL RULE FOR INDIVIDUAL RETIRE-  
 17 MENT PLANS.—In the case of any qualified fraudu-  
 18 lent investment loss in connection with assets held in  
 19 an individual retirement plan, the beneficiary of such  
 20 plan shall be allowed a deduction with respect to  
 21 such loss in an amount equal to the lesser of—

22 “(A) the greater of—

23 “(i) the sum of the amount of con-  
 24 tributions to such individual retirement  
 25 plan by such beneficiary plus the amount

1 of contributions to such individual retire-  
2 ment plan by such beneficiary's employer  
3 on behalf of such beneficiary, or

4 “(ii) 60 percent of the excess of—

5 “(I) the value of the assets held  
6 by such beneficiary in such individual  
7 retirement plan, as reported imme-  
8 diately before such loss was discov-  
9 ered, over

10 “(II) the sum of value of the as-  
11 sets held by such beneficiary in such  
12 individual retirement plan imme-  
13 diately after such loss was discovered,  
14 or

15 “(B) \$2,000,000.

16 “(3) QUALIFIED FRAUDULENT INVESTMENT  
17 LOSS.—For purposes of this subsection

18 “(A) IN GENERAL.—The term ‘qualified  
19 fraudulent investment loss’ means a loss discov-  
20 ered in 2008 or 2009 resulting from a specified  
21 fraudulent arrangement in which, as a result of  
22 the conduct that caused the loss—

23 “(i) a person described in subpara-  
24 graph (B) was charged under State or  
25 Federal law with the commission of fraud,

1           embezzlement, or similar crime which, if  
2           proven, would constitute a theft (within the  
3           meaning of subsection (c)(3)), or

4           “(ii) a person described in subpara-  
5           graph (B) was the subject of a State or  
6           Federal criminal complaint (not withdrawn  
7           or dismissed) alleging the commission of  
8           fraud, embezzlement, or similar crime  
9           which, if proven, would constitute a theft  
10          (within the meaning of subsection (c)(3)),  
11          and either—

12                 “(I) the complaint alleged an ad-  
13                 mission by such person or the execu-  
14                 tion of an affidavit by such person ad-  
15                 mitting the crime, or

16                 “(II) a receiver or trustee was  
17                 appointed with respect to the arrange-  
18                 ment or assets of the arrangement  
19                 were frozen.

20           “(B) SPECIFIED FRAUDULENT ARRANGE-  
21           MENT.—The term ‘specified fraudulent ar-  
22           rangement’ means an arrangement in which a  
23           person—

24                 “(i) receives cash or property from in-  
25                 vestors,

1 “(ii) purports to earn income for in-  
2 vestors,

3 “(iii) reports income amounts to the  
4 investors that are partially or wholly ficti-  
5 tious,

6 “(iv) makes payments, if any, of  
7 purposed income or principal to some in-  
8 vestors from amounts that other investors  
9 invested in the fraudulent arrangement,  
10 and

11 “(v) appropriates some or all of the  
12 investors’ cash or property.

13 “(4) REGULATIONS.—The Secretary shall issue  
14 such regulations or other guidance as may be nec-  
15 essary or appropriate to carry out this subsection,  
16 including to prevent fraud and abuse under this sub-  
17 section.”.

18 (b) EFFECTIVE DATE.—The amendments made by  
19 this section shall apply to taxable years beginning after  
20 December 31, 2007.

21 **SEC. 3. EXTENSION OF NET OPERATING LOSS CARRYBACK**  
22 **PERIOD.**

23 (a) IN GENERAL.—Paragraph (1) of section 172(b)  
24 of the Internal Revenue Code of 1986 is amended by add-  
25 ing at the end the following new subparagraph:

1           “(K) LOSSES ATTRIBUTABLE TO INVEST-  
2           MENTS IN FRAUDULENT SCHEMES.—

3           “(i) IN GENERAL.—In the case of the  
4           portion of a net operating loss which is a  
5           qualified fraudulent investment loss (as de-  
6           fined in section 165(m)(2)) with respect to  
7           which the taxpayer has elected the applica-  
8           tion of this subparagraph—

9           “(I) subparagraph (A)(i) shall be  
10          applied by substituting ‘the applicable  
11          number of taxable years’ for ‘2 tax-  
12          able years’ with respect to the portion  
13          of the net operating loss for the tax-  
14          able year which is a qualified fraudu-  
15          lent investment loss, and

16          “(II) subparagraphs (F) and (H)  
17          shall not apply with respect to any  
18          qualified fraudulent investment loss.

19          “(ii) APPLICABLE NUMBER OF TAX-  
20          ABLE YEARS.—For purposes of clause (i),  
21          the applicable number of taxable years is  
22          any whole number elected by the taxpayer  
23          which is more than 2 but not more than  
24          10 years.

1                   “(iii) SPECIAL RULE FOR DECEASED  
2                   SPOUSES.—If an individual was included  
3                   on a joint return of a taxpayer for a tax-  
4                   able year to which a qualified fraudulent  
5                   investment loss (as so defined) is carried  
6                   back under this subparagraph and such in-  
7                   dividual has died before the beginning of  
8                   the taxable year in which such qualified  
9                   fraudulent investment loss arises, then  
10                  such qualified fraudulent investment loss  
11                  shall be treated as a loss with respect to  
12                  both the taxpayer and such individual with  
13                  respect to the taxable year to which such  
14                  loss carried.

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

22                  (b) EFFECTIVE DATE.—

23                   (1) IN GENERAL.—Except as provided in para-  
24                  graph (2), the amendments made by this section

1 shall apply to net operating losses arising in taxable  
 2 years beginning after December 31, 2007.

3 (2) TRANSITION RULE.—In the case of a net  
 4 operating loss for a taxable year ending before the  
 5 date of the enactment of this Act—

6 (A) any election made under subsection  
 7 (b)(1)(H)(iii) or (b)(3) of section 172 of such  
 8 Code with respect to such loss may (notwith-  
 9 standing such section) be revoked before the  
 10 due date (including extension of time) for filing  
 11 the return for the taxpayer's last taxable year  
 12 beginning during 2010, and

13 (B) any application under section 6411(a)  
 14 of such Code with respect to such loss shall be  
 15 treated as timely filed if filed before such due  
 16 date.

17 **SEC. 4. HARDSHIP WITHDRAWALS.**

18 (a) IN GENERAL.—Paragraph (2) of section 72(t) of  
 19 the Internal Revenue Code of 1986 is amended by adding  
 20 at the end the following new subparagraph:

21 “(H) DISTRIBUTIONS TO REPLACE QUALI-  
 22 FIED FRAUDULENT INVESTMENT LOSSES.—Any  
 23 distribution which was made during the 10-year  
 24 period beginning on the date on which a quali-  
 25 fied fraudulent investment loss (as defined in



1           section 165(m)(2)) was discovered to the extent  
 2           the aggregate of such distributions do not ex-  
 3           ceed such qualified fraudulent investment  
 4           loss.”.

5           (b) EFFECTIVE DATE.—The amendment made by  
 6 this section shall apply to taxable years beginning after  
 7 December 31, 2007.

8 **SEC. 5. CATCH-UP CONTRIBUTIONS.**

9           (a) IN GENERAL.—Section 219(b)(5) of the Internal  
 10 Revenue Code of 1986 is amended by redesignating sub-  
 11 paragraphs (C) and (D) as subparagraphs (D) and (E),  
 12 respectively, and by inserting after subparagraph (B) the  
 13 following new subparagraph:

14                   “(C) CATCHUP CONTRIBUTIONS RELATING  
 15                   TO QUALIFIED FRAUDULENT INVESTMENT  
 16                   LOSSES.—

17                           “(i) IN GENERAL.—In the case of any  
 18                           applicable individual who elects to make a  
 19                           qualified retirement contribution in addi-  
 20                           tion to the amount determined under sub-  
 21                           paragraph (A), the deductible amount for  
 22                           any taxable year shall be increased by an  
 23                           amount equal to the lesser of—

1 “(I) 100 percent of the amount  
2 determined under subparagraph (A)  
3 for such taxable year, or

4 “(II) the excess of the qualified  
5 fraudulent investment loss described  
6 in clause (ii) over the amount of con-  
7 tributions allowed as a deduction by  
8 reason of this subparagraph for all  
9 preceding taxable years.

10 “(ii) APPLICABLE INDIVIDUAL.—For  
11 purposes of this subparagraph, the term  
12 ‘applicable individual’ means, with respect  
13 to any taxable year, any individual with a  
14 qualified fraudulent investment loss (as de-  
15 fined in section 165(m)(2)) in an indi-  
16 vidual retirement plan in any of the 10 im-  
17 mediately preceding taxable years if the  
18 amount of such loss exceeded 50 percent of  
19 the value of such individual retirement  
20 plan on the day immediately preceding the  
21 discovery of the qualified fraudulent invest-  
22 ment loss.”.

23 (b) EFFECTIVE DATE.—The amendments made by  
24 this section shall apply to taxable years beginning after  
25 December 31, 2007.

1 **SEC. 6. EXTENSION OF LIMITATION FOR CREDITS AND RE-**  
2 **FUNDS FOR GIFTS AND BEQUESTS OF ASSETS**  
3 **WITH QUALIFIED FRAUDULENT INVESTMENT**  
4 **LOSSES.**

5 (a) IN GENERAL.—Section 6511 of the Internal Rev-  
6 enue Code of 1986 is amended by redesignating subsection  
7 (i) as subsection (j) and by inserting after subsection (h)  
8 the following new subsection:

9 “(i) SPECIAL RULES APPLICABLE TO ESTATE AND  
10 GIFT TAXES WITH RESPECT TO ASSETS WITH QUALI-  
11 FIED FRAUDULENT INVESTMENT LOSSES.—

12 “(1) IN GENERAL.—If a claim for a credit or  
13 refund relates to an overpayment of taxes imposed  
14 under subtitle B in connection with a gift or bequest  
15 of an interest in an investment with respect to which  
16 there is a qualified fraudulent investment loss (as  
17 defined in section 165(m)(2)) and the taxpayer did  
18 not know, and reasonably should not have known,  
19 about the criminal behavior in connection with such  
20 loss, such credit or refund may be allowed or made  
21 if claim therefor is filed on or before the date that  
22 is 6 years after the return to which the credit or  
23 overpayment relates was filed.

24 “(2) DETERMINATION OF VALUE.—

25 “(A) GIFT TAXES.—In determining the  
26 amount of any credit or refund described in

1 paragraph (1) relating to a gift, the value of  
2 such gift shall be not more than the greater of  
3 the value of such gift on the last day of the tax-  
4 able year in which the qualified fraudulent in-  
5 vestment loss was discovered or the amount re-  
6 alized from the disposition of such gift (if any)  
7 by the donee.

8 “(B) ESTATE TAXES.—In determining the  
9 amount of any credit or refund described in  
10 paragraph (1) relating to a bequest, the value  
11 of such bequest shall be not more than the  
12 greater of the value of such bequest on the last  
13 day of the calendar year in which the qualified  
14 fraudulent investment loss was discovered or  
15 the amount realized from the disposition of  
16 such bequest (if any) by the donee.”.

17 (b) EFFECTIVE DATE.—The amendments made by  
18 this section shall apply to gifts or bequests made after De-  
19 cember 31, 2007.

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