

111TH CONGRESS
2D SESSION

S. 3166

To amend the Internal Revenue Code of 1986 to provide tax relief for persons with investment losses due to fraud or embezzlement.

IN THE SENATE OF THE UNITED STATES

MARCH 25, 2010

Mr. SCHUMER (for himself, Mr. KYL, Mr. MENENDEZ, Mr. WICKER, Mr. KERRY, Mr. COCHRAN, Ms. LANDRIEU, Mr. BURR, Mrs. GILLIBRAND, Mr. BOND, Mr. NELSON of Florida, Mr. LEMIEUX, Mrs. LINCOLN, Mr. SPECTER, Mr. LIEBERMAN, Mr. DODD, Ms. CANTWELL, and Mr. VITTER) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide tax relief for persons with investment losses due to fraud or embezzlement.

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 Victim’s
5 Bill of Rights Act of 2010”.

1 **SEC. 2. TREATMENT OF QUALIFIED FRAUDULENT INVEST-**
 2 **MENT LOSSES IN INDIVIDUAL RETIREMENT**
 3 **ACCOUNTS.**

4 (a) IN GENERAL.—Section 165 of the Internal Rev-
 5 enue Code of 1986 is amended by redesignating subsection
 6 (m) as subsection (n) and by inserting after subsection
 7 (l) the following new subsection:

8 “(m) SPECIAL RULES FOR QUALIFIED FRAUDULENT
 9 INVESTMENT LOSSES IN INDIVIDUAL RETIREMENT AC-
 10 COUNTS.—

11 “(1) IN GENERAL.—In the case of any qualified
 12 fraudulent investment loss in connection with assets
 13 held in an individual retirement plan, the beneficiary
 14 of such plan shall be allowed a deduction with re-
 15 spect to such loss in an amount equal to the lesser
 16 of—

17 “(A) the greater of—

18 “(i) the sum of the amount of con-
 19 tributions to such individual retirement
 20 plan by such beneficiary plus the amount
 21 of contributions to such individual retire-
 22 ment plan by such beneficiary’s employer
 23 on behalf of such beneficiary, or

24 “(ii) 50 percent of the excess of—

25 “(I) the value of the assets held
 26 by such beneficiary in such individual

1 retirement plan, as reported imme-
 2 diately before such loss was discov-
 3 ered, over

4 “(II) the sum of value of the as-
 5 sets held by such beneficiary in such
 6 individual retirement plan imme-
 7 diately after such loss was discovered,
 8 or

9 “(B) \$1,500,000.

10 “(2) QUALIFIED FRAUDULENT INVESTMENT
 11 LOSS.—For purposes of this subsection—

12 “(A) IN GENERAL.—The term ‘qualified
 13 fraudulent investment loss’ means a loss discov-
 14 ered in 2008 or 2009 resulting from a specified
 15 fraudulent arrangement in which, as a result of
 16 the conduct that caused the loss—

17 “(i) a person described in subpara-
 18 graph (B) was charged under State or
 19 Federal law with the commission of fraud,
 20 embezzlement, or similar crime which, if
 21 proven, would constitute a theft (within the
 22 meaning of subsection (c)(3)), or

23 “(ii) a person described in subpara-
 24 graph (B) was the subject of a State or
 25 Federal criminal complaint (not withdrawn

1 or dismissed) alleging the commission of
2 fraud, embezzlement, or similar crime
3 which, if proven, would constitute a theft
4 (within the meaning of subsection (c)(3)),
5 and either—

6 “(I) the complaint alleged an ad-
7 mission by such person or the execu-
8 tion of an affidavit by such person ad-
9 mitting the crime, or

10 “(II) a receiver or trustee was
11 appointed with respect to the arrange-
12 ment or assets of the arrangement
13 were frozen.

14 “(B) SPECIFIED FRAUDULENT ARRANGE-
15 MENT.—The term ‘specified fraudulent ar-
16 rangement’ means an arrangement in which a
17 person—

18 “(i) receives cash or property from in-
19 vestors,

20 “(ii) purports to earn income for in-
21 vestors,

22 “(iii) reports income amounts to the
23 investors that are partially or wholly ficti-
24 tious,

1 “(iv) makes payments, if any, of
 2 purposed income or principal to some in-
 3 vestors from amounts that other investors
 4 invested in the fraudulent arrangement,
 5 and

6 “(v) appropriates some or all of the
 7 investors’ cash or property.

8 “(3) REGULATIONS.—The Secretary shall issue
 9 such regulations or other guidance as may be nec-
 10 essary or appropriate to carry out this subsection,
 11 including to prevent fraud and abuse under this sub-
 12 section.”.

13 (b) DEDUCTION ALLOWED IN CALCULATING NET IN-
 14 VESTMENT LOSS.—Section 172(d)(4)(C) of the Internal
 15 Revenue Code of 1986 is amended by inserting “and any
 16 deduction allowed under section 165(m)” after “section
 17 165(c)”.

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

21 **SEC. 3. 6-YEAR NET OPERATING LOSS CARRYBACK.**

22 (a) EXTENSION OF NET OPERATING LOSS
 23 CARRYBACK PERIOD.—Paragraph (1) of section 172(b) of
 24 the Internal Revenue Code of 1986 is amended by adding
 25 at the end the following new subparagraph:

1 “(K) QUALIFIED FRAUDULENT INVEST-
2 MENT LOSSES.—

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 the lesser of—

1 “(I) 6 years (7 years in any case
2 in which the taxpayer or, in the case
3 of a joint return, the taxpayer’s
4 spouse has attained the age of 65 be-
5 fore the close of the taxable year in
6 which the qualified fraudulent invest-
7 ment loss was discovered), or

8 “(II) the period that the taxpayer
9 had amounts invested in the scheme
10 to which such election applies.

11 “(iii) SPECIAL RULE FOR DECEASED
12 SPOUSES.—If an individual was included
13 on a joint return of a taxpayer for a tax-
14 able year to which a qualified fraudulent
15 investment loss (as so defined) is carried
16 back under this subparagraph and such in-
17 dividual has died before the beginning of
18 the taxable year in which such qualified
19 fraudulent investment loss arises, then
20 such qualified fraudulent investment loss
21 shall be treated as a loss with respect to
22 both the taxpayer and such individual with
23 respect to the taxable year to which such
24 loss carried.

1 “(iv) COORDINATION WITH PARA-
 2 GRAPH (2).—For purposes of applying
 3 paragraph (2), a qualified fraudulent in-
 4 vestment loss (as so defined) for any tax-
 5 able year shall be treated in a manner
 6 similar to the manner in which a specified
 7 liability loss is treated.”.

8 (b) EFFECTIVE DATE.—

9 (1) IN GENERAL.—Except as otherwise pro-
 10 vided in this subsection, the amendments made by
 11 this section shall apply to net operating losses aris-
 12 ing in taxable years ending after December 31,
 13 2007.

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

17 (A) notwithstanding section
 18 172(b)(1)(H)(iii)(II), any election made under
 19 subsection (b)(1)(H) or 172(b)(3) of section
 20 172 of such Code with respect to such loss may
 21 (notwithstanding such section) be revoked be-
 22 fore the applicable date,

23 (B) any election made under section
 24 172(b)(1)(K) of such Code with respect to such
 25 loss shall (notwithstanding such section) be

1 treated as timely made if made before the appli-
 2 cable date, and

3 (C) any application under section 6411(a)
 4 of such Code with respect to such loss shall be
 5 treated as timely filed if filed before the appli-
 6 cable date.

7 For purposes of this paragraph, the term “applica-
 8 ble date” means the date which is 60 days after the
 9 date of the enactment of this Act.

10 **SEC. 4. HARDSHIP WITHDRAWALS.**

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

14 “(H) DISTRIBUTIONS TO REPLACE QUALI-
 15 FIED FRAUDULENT INVESTMENT LOSSES.—Any
 16 distribution which was made during the 10-year
 17 period beginning on the date on which a quali-
 18 fied fraudulent investment loss (as defined in
 19 section 165(m)(2)) was discovered to the extent
 20 the aggregate of such distributions do not ex-
 21 ceed such qualified fraudulent investment
 22 loss.”.

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

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

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

7 “(C) CATCHUP CONTRIBUTIONS RELATING
 8 TO QUALIFIED FRAUDULENT INVESTMENT
 9 LOSSES.—

10 “(i) IN GENERAL.—In the case of any
 11 applicable individual who elects to make a
 12 qualified retirement contribution in addi-
 13 tion to the amount determined under sub-
 14 paragraph (A), the deductible amount for
 15 any taxable year shall be increased by an
 16 amount equal to the lesser of—

17 “(I) 100 percent of the amount
 18 determined under subparagraph (A)
 19 for such taxable year, or

20 “(II) the excess of the qualified
 21 fraudulent investment loss described
 22 in clause (ii) over the amount of con-
 23 tributions allowed as a deduction by
 24 reason of this subparagraph for all
 25 preceding taxable years.

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

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

17 **SEC. 6. EXTENSION OF LIMITATION FOR CREDITS AND RE-**
18 **FUNDS FOR GIFTS AND BEQUESTS OF ASSETS**
19 **WITH QUALIFIED FRAUDULENT INVESTMENT**
20 **LOSSES.**

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

1 “(i) SPECIAL RULES APPLICABLE TO ESTATE AND
2 GIFT TAXES WITH RESPECT TO ASSETS WITH QUALI-
3 FIED FRAUDULENT INVESTMENT LOSSES.—

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

16 “(2) DETERMINATION OF VALUE.—

17 “(A) GIFT TAXES.—In determining the
18 amount of any credit or refund described in
19 paragraph (1) relating to a gift, the value of
20 such gift shall be not more than the greater of
21 the value of such gift on the last day of the tax-
22 able year in which the qualified fraudulent in-
23 vestment loss was discovered or the amount re-
24 alized from the disposition of such gift (if any)
25 by the donee.

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

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

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