

111TH CONGRESS  
1ST SESSION

# S. 31

To amend the Internal Revenue Code of 1986 with respect to the proper tax treatment of certain indebtedness discharged in 2009 or 2010, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JANUARY 6, 2009

Mr. ENSIGN introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 with respect to the proper tax treatment of certain indebtedness discharged in 2009 or 2010, and for other purposes.

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. PROPER TAX TREATMENT OF CERTAIN FINAN-**  
4 **CIAL INDEBTEDNESS DISCHARGED IN 2009**  
5 **OR 2010.**

6 (a) IN GENERAL.—Section 108(a)(1) of the Internal  
7 Revenue Code of 1986 (relating to exclusion from gross  
8 income) is amended by striking “or” at the end of sub-  
9 paragraph (D), by striking the period at the end of sub-

1 paragraph (E) and inserting “, or” and by adding at the  
 2 end the following new subparagraph:

3 “(F) the indebtedness discharged is appli-  
 4 cable financial indebtedness which is discharged  
 5 after December 31, 2008, and before January  
 6 1, 2011.”.

7 (b) APPLICABLE FINANCIAL INDEBTEDNESS.—Sec-  
 8 tion 108 of such Code is amended by adding at the end  
 9 the following new subsection:

10 “(i) DEFINITIONS AND RULES RELATING TO APPLI-  
 11 CABLE FINANCIAL INDEBTEDNESS.—For purposes of sub-  
 12 section (a)(1)(F)—

13 “(1) APPLICABLE FINANCIAL INDEBTED-  
 14 NESS.—The term ‘applicable financial indebtedness’  
 15 means indebtedness—

16 “(A) which was originally issued by a cor-  
 17 poration, or by a partnership engaged in a  
 18 trade or business (other than a trade or busi-  
 19 ness of trading in stocks or securities for the  
 20 partnership’s own account), and

21 “(B) which is—

22 “(i) indebtedness originally issued or  
 23 syndicated by a financial institution (as de-  
 24 fined in section 582(c)(2) without regard  
 25 to subparagraph (C) thereof) or a deposi-

tory institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1)),

“(ii) indebtedness which—

“(I) constitutes a security within the meaning of the Securities Act of 1933, and

“(II) was originally issued pursuant to a registration statement that was declared effective under such Act or pursuant to an exemption from, or in a transaction not subject to, the registration requirements of such Act, or

“(iii) indebtedness that is traded on an established market (within the meaning of section 1273(b)(3)).

“(2) APPLICABLE DISCHARGES.—Subsection (a)(1)(F) shall only apply to a discharge of applicable financial indebtedness if such discharge is by reason of—

“(A) the acquisition of the indebtedness by the issuer of the indebtedness,

1           “(B) the acquisition of the indebtedness of  
 2           the issuer by a person related, or who becomes  
 3           related, to the issuer of the indebtedness from  
 4           a person who is not related to the issuer, or

5           “(C) the significant modification of the in-  
 6           debtedness (within the meaning of section  
 7           1001).

8           For purposes of subparagraph (B), the determina-  
 9           tion of whether a person is related to another person  
 10          shall be made in the same manner as under sub-  
 11          section (e)(4).”.

12          (c) COORDINATION OF EXCLUSIONS.—Section  
 13          108(a)(2) of such Code is amended—

14                 (1) by striking “and (E)” in subparagraph (A)  
 15                 and inserting “(E), and (F)”, and

16                 (2) by adding at the end the following new sub-  
 17                 paragraph:

18                 “(D) FINANCIAL INDEBTEDNESS EXCLU-  
 19                 SION TAKES PRECEDENCE OVER INSOLVENCY  
 20                 EXCLUSION UNLESS ELECTED OTHERWISE.—  
 21                 Paragraph (1)(B) shall not apply to a discharge  
 22                 to which paragraph (1)(F) applies unless the  
 23                 taxpayer elects to apply paragraph (1)(B) in  
 24                 lieu of paragraph (1)(F).”.

1 (d) EARNINGS AND PROFITS.—Section 312(l) of such  
 2 Code is amended by adding at the end the following new  
 3 paragraph:

4 “(3) DISCHARGE OF CERTAIN FINANCIAL IN-  
 5 DEBTEDNESS.—The earnings and profits of a cor-  
 6 poration shall not include income from a discharge  
 7 of indebtedness to which section 108(a)(1)(F) ap-  
 8 plies.”.

9 (e) OTHER SPECIAL RULES.—

10 (1) TREATMENT AS MARKET DISCOUNT  
 11 BOND.—For purposes of the Internal Revenue Code  
 12 of 1986, any indebtedness acquired in a transaction  
 13 described in section 108(i)(2)(B) of such Code (as  
 14 added by subsection (b)), or received pursuant to an  
 15 exchange arising from a transaction described in sec-  
 16 tion 108(i)(2)(C) of such Code (as so added), shall  
 17 be treated as a market discount bond (within the  
 18 meaning of section 1278(a)(1) of such Code) having  
 19 market discount equal to the amount (if any) which,  
 20 but for section 108(a)(1)(F) of such Code (as added  
 21 by subsection (a)), would have been includible in  
 22 gross income by reason of the discharge of such in-  
 23 debtedness in any such transaction.

24 (2) ACQUISITIONS BY FOREIGN PERSONS.—Any  
 25 interest (or original issue discount) paid or accrued

1 after December 31, 2008, and before January 1,  
2 2011, on indebtedness which is described in section  
3 108(a)(1)(F) of such Code by reason of the acqui-  
4 sition of such indebtedness by a foreign person or by  
5 a partnership (or other pass-through entity) in  
6 which a foreign person is a partner (or other profits  
7 or capital owner) shall not be subject to sections  
8 871(h)(3), 881(c)(3)(B) or 881(c)(3)(C) of such  
9 Code.

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