

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.

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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

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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. 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-

1           tion which would be allowed to such orga-  
2           nization under section 165(m) were such  
3           organization a taxpayer to which section  
4           165(m) applies.

5           “(C) OVERALL LIMITATION.—In no event  
6           shall the amount allowed as a deduction under  
7           this section for the taxable year by reason of  
8           this paragraph exceed the excess of the tax-  
9           payer’s taxable income (determined without re-  
10          gard to this paragraph) for such year over the  
11          deduction allowed under this section without re-  
12          gard to this paragraph.”.

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

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

19                  “(1) IN GENERAL.—If—

20                          “(A) during any preceding calendar year, a  
21                          taxpayer made a gift of an interest in an invest-  
22                          ment operation later determined to be a fraudu-  
23                          lent Ponzi-type scheme (as defined in section  
24                          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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