

112TH CONGRESS  
1ST SESSION

# H. R. 1635

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, 2011

Mr. PASCRELL (for himself, Mr. BOUSTANY, Ms. BERKLEY, Mr. GARRETT, Mrs. MALONEY, Mr. KING of New York, Mr. ROTHMAN of New Jersey, Mr. ROONEY, Ms. SCHWARTZ, Ms. ROS-LEHTINEN, Mr. WEINER, and Mr. SESSIONS) 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 2011”.

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

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

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

10 “(1) IN GENERAL.—If—

11 “(A) a taxpayer has qualified fraudulent  
12 investment loss, and

13 “(B) the amount of such loss (without tak-  
14 ing into account any potential recoveries) can  
15 reasonably be estimated as of the close of the  
16 taxable year,

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

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

26 “(A) the greater of—

1           “(i) the sum of the amount of con-  
2 tributions to such individual retirement  
3 plan by such beneficiary plus the amount  
4 of contributions to such individual retire-  
5 ment plan by such beneficiary’s employer  
6 on behalf of such beneficiary, or

7           “(ii) 60 percent of the excess of—

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

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

18           “(B) \$2,000,000.

19           “(3) QUALIFIED FRAUDULENT INVESTMENT  
20 LOSS.—For purposes of this subsection—

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

1           “(i) a person described in subpara-  
2 graph (B) was charged under State or  
3 Federal law with the commission of fraud,  
4 embezzlement, or similar crime which, if  
5 proven, would constitute a theft (within the  
6 meaning of subsection (c)(3)), or

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

15           “(I) the complaint alleged an ad-  
16 mission by such person or the execu-  
17 tion of an affidavit by such person ad-  
18 mitting the crime, or

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

23           “(B) SPECIFIED FRAUDULENT ARRANGE-  
24 MENT.—The term ‘specified fraudulent ar-

1           rangement’ means an arrangement in which a  
2           person—

3                   “(i) receives cash or property from in-  
4           vestors,

5                   “(ii) purports to earn income for in-  
6           vestors,

7                   “(iii) reports income amounts to the  
8           investors that are partially or wholly ficti-  
9           tious,

10                   “(iv) makes payments, if any, of  
11           purposed income or principal to some in-  
12           vestors from amounts that other investors  
13           invested in the fraudulent arrangement,  
14           and

15                   “(v) appropriates some or all of the  
16           investors’ cash or property.

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

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

1 **SEC. 3. EXTENSION OF NET OPERATING LOSS CARRYBACK**  
2 **PERIOD.**

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

6 “(K) LOSSES ATTRIBUTABLE TO INVEST-  
7 MENTS IN FRAUDULENT SCHEMES.—

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

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

21 “(II) subparagraphs (F) and (H)  
22 shall not apply with respect to any  
23 qualified fraudulent investment loss.

24 “(ii) APPLICABLE NUMBER OF TAX-  
25 ABLE YEARS.—For purposes of clause (i),  
26 the applicable number of taxable years is

1 any whole number elected by the taxpayer  
2 which is more than 2 but not more than  
3 10 years.

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

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.”.

25 (b) EFFECTIVE DATE.—

1           (1) IN GENERAL.—Except as provided in para-  
2 graph (2), the amendments made by this section  
3 shall apply to net operating losses arising in taxable  
4 years beginning after December 31, 2007.

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

8                   (A) any election made under subsection  
9                   (b)(1)(H)(iii) or (b)(3) of section 172 of such  
10 Code with respect to such loss may (notwith-  
11 standing such section) be revoked before the  
12 due date (including extension of time) for filing  
13 the return for the taxpayer’s last taxable year  
14 beginning during 2011, and

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

19 **SEC. 4. HARDSHIP WITHDRAWALS.**

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

23                   “(H) DISTRIBUTIONS TO REPLACE QUALI-  
24 FIED FRAUDULENT INVESTMENT LOSSES.—Any  
25 distribution which was made during the 10-year



1 period beginning on the date on which a quali-  
2 fied fraudulent investment loss (as defined in  
3 section 165(m)(3)) was discovered to the extent  
4 the aggregate of such distributions do not ex-  
5 ceed such qualified fraudulent investment  
6 loss.”.

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

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

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

16 “(C) CATCHUP CONTRIBUTIONS RELATING  
17 TO QUALIFIED FRAUDULENT INVESTMENT  
18 LOSSES.—

19 “(i) IN GENERAL.—In the case of any  
20 applicable individual who elects to make a  
21 qualified retirement contribution in addi-  
22 tion to the amount determined under sub-  
23 paragraph (A), the deductible amount for  
24 any taxable year shall be increased by an  
25 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)(3)) 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)(3)) 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.

20 **SEC. 7. WAIVER OF LIMITATION FOR CREDITS AND RE-**  
21 **FUNDS ATTRIBUTABLE TO THIS ACT.**

22 If the credit or refund of any overpayment of tax re-  
23 sulting from the application of the amendments made by  
24 sections 1 through 5 of this Act to a period before the  
25 date of enactment of this Act is prevented as of such date

1 by the operation of any law or rule of law (including res  
2 judicata), such credit or refund may nevertheless be al-  
3 lowed or made if the claim therefor is filed before the close  
4 of the 1-year period beginning on the date of the enact-  
5 ment of this Act.

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