

112TH CONGRESS  
2D SESSION

# S. 2033

To amend the Internal Revenue Code of 1986 to end the costly derivatives blended rate loophole, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JANUARY 23, 2012

Mr. LEVIN 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 to end the costly derivatives blended rate loophole, 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. SHORT TITLE.**

4 This Act may be cited as the “Closing the Derivatives  
5 Blended Rate Loophole Act”.

6 **SEC. 2. MODIFICATIONS TO TREATMENT OF SECTION 1256**

7 **CONTRACTS.**

8 (a) **ELIMINATION OF BLENDED CAPITAL GAIN OR**  
9 **LOSS TREATMENT IN FAVOR OF SHORT-TERM CAPITAL**  
10 **GAIN OR LOSS.—**

1           (1) IN GENERAL.—Paragraph (3) of section  
2 1256(a) of the Internal Revenue Code of 1986 is  
3 amended to read as follows:

4           “(3) any gain or loss with respect to a section  
5 1256 contract shall be treated as short-term capital  
6 gain or loss, and”.

7           (2) CONFORMING AMENDMENTS.—Subsection  
8 (f) of section 1256 of such Code is amended by  
9 striking paragraphs (2), (3), and (4) and by redesign-  
10 ating paragraph (5) as paragraph (2).

11 (b) CONFORMING AMENDMENTS.—

12           (1) Clause (iv) of section 988(c)(1)(E) of the  
13 Internal Revenue Code of 1986 is amended to read  
14 as follows:

15           “(iv) TREATMENT OF CERTAIN CUR-  
16 RENCY CONTRACTS.—Except as provided  
17 in regulations, in the case of a qualified  
18 fund, any bank forward contract, any for-  
19 eign currency futures contract traded on a  
20 foreign exchange, or to the extent provided  
21 in regulations any similar instrument,  
22 which is not otherwise a section 1256 con-  
23 tract shall be treated as a section 1256  
24 contract for purposes of section 1256.”.

1           (2) Subparagraph (A) of section 1212(c)(1) of  
2 such Code is amended by striking “preceding taxable  
3 year” and all that follows and inserting “preceding  
4 taxable year, the amount so allowed shall be treated  
5 as short-term capital loss from section 1256 con-  
6 tracts.”.

7           (3) Subparagraph (A) of section 1212(c)(6) of  
8 such Code is amended by striking “preceding taxable  
9 year” and all that follows and inserting “preceding  
10 taxable year, the amount allowed as a carryback  
11 shall be treated as short-term gain for the loss  
12 year.”.

13           (4) Subparagraph (B) of section 1212(c)(6) of  
14 such Code is amended by striking “or long-term”.

15           (5) Subsection (f) of section 1256 of such Code  
16 is amended by striking paragraphs (3) and (4) and  
17 by redesignating paragraph (5) as paragraph (3).

18           (c) EFFECTIVE DATES.—

19           (1) IN GENERAL.—Except as provided in para-  
20 graph (2), the amendments made by this section  
21 shall apply to taxable years beginning after the date  
22 of the enactment of this Act.

23           (2) CONFORMING AMENDMENTS.—The amend-  
24 ments made by paragraphs (2), (3), and (4) of sub-

1 section (b) shall apply to losses for taxable years be-  
2 ginning after the date of the enactment of this Act.

3 **SEC. 3. MODIFICATIONS TO TREATMENT OF DEALERS IN**  
4 **SECURITIES AND COMMODITIES.**

5 (a) MODIFICATION OF DEFINITION OF SECURITY.—  
6 Paragraph (2) of section 475(c) of the Internal Revenue  
7 Code of 1986 is amended by striking the second sentence.

8 (b) REQUIRED MARK TO MARKET FOR DEALERS IN  
9 COMMODITIES.—Subsection (e) of section 475 of the In-  
10 ternal Revenue Code of 1986 is amended—

11 (1) by striking “In the case of a dealer in com-  
12 modities who elects the application of this sub-  
13 section, this section shall apply to commodities held  
14 by such dealer” in paragraph (1) and inserting  
15 “This section shall apply to commodities held by a  
16 dealer in commodities”, and

17 (2) by striking paragraph (3).

18 (c) COMMODITIES DERIVATIVES DEALERS.—Clause  
19 (i) of section 1221(b)(1)(B) of the Internal Revenue Code  
20 of 1986 is amended by striking “a note, bond, or other  
21 evidence of indebtedness, or a section 1256 contract (as  
22 defined in section 1256(b))” and inserting “or a note,  
23 bond, or other evidence of indebtedness”.

24 (d) TECHNICAL AMENDMENT.—Paragraph (1) of  
25 section 1402(i) of the Internal Revenue Code of 1986 is

1 amended by striking “subsection (a)(3)(A)” and inserting  
2 “subsection (a)(3)”.

3 (e) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to taxable years beginning after  
5 the date of the enactment of this Act.

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