

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4099

To amend the Internal Revenue Code of 1986 to index the basis of certain assets for purposes of determining gain.

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IN THE HOUSE OF REPRESENTATIVES

MARCH 21, 1994

Mr. MORAN 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 index the basis of certain assets for purposes of determining gain.

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. INDEXING OF CERTAIN ASSETS FOR PURPOSES**

4 **OF DETERMINING GAIN.**

5 (a) IN GENERAL.—Part II of subchapter O of chap-  
6 ter 1 of the Internal Revenue Code of 1986 (relating to  
7 basis rules of general application) is amended by inserting  
8 after section 1021 the following new section:

1 **“SEC. 1022. INDEXING OF CERTAIN ASSETS FOR PURPOSES**  
2 **OF DETERMINING GAIN.**

3 “(a) GENERAL RULE.—

4 “(1) INDEXED BASIS SUBSTITUTED FOR AD-  
5 JUSTED BASIS.—Solely for purposes of determining  
6 gain on the sale or other disposition by an individual  
7 of an indexed asset which has been held for more  
8 than 1 year, the indexed basis of the asset shall be  
9 substituted for its adjusted basis.

10 “(2) SPECIAL RULE FOR RECAPTURE GAIN.—

11 “(A) IN GENERAL.—Paragraph (1) shall  
12 not apply for purposes of determining the  
13 amount of recapture gain on the sale or other  
14 disposition of an indexed asset, but the amount  
15 of any such recapture gain shall increase the  
16 adjusted basis of the asset for purposes of ap-  
17 plying paragraph (1) to determine the amount  
18 of other gain on such sale or other disposition.

19 “(B) RECAPTURE GAIN.—For purposes of  
20 subparagraph (A), the term ‘recapture gain’  
21 means any gain treated as ordinary income  
22 under section 1245 or 1254 or which would be  
23 treated as ordinary income under section 1250  
24 if such section applied to all depreciation ad-  
25 justments instead of only additional deprecia-  
26 tion.

1 “(b) INDEXED ASSET.—

2 “(1) IN GENERAL.—For purposes of this sec-  
3 tion, the term ‘indexed asset’ means—

4 “(A) any stock in a corporation, and

5 “(B) any tangible property (or any interest  
6 therein),

7 which is a capital asset or property used in the trade  
8 or business (as defined in section 1231(b)).

9 “(2) CERTAIN PROPERTY EXCLUDED.—For  
10 purposes of this section, the term ‘indexed asset’  
11 does not include—

12 “(A) CREDITOR’S INTEREST.—Any interest  
13 in property which is in the nature of a credi-  
14 tor’s interest.

15 “(B) COLLECTIBLES.—Any collectible (as  
16 defined in section 408(m)(2) without regard to  
17 section 408(m)(3)).

18 “(C) OPTIONS.—Any option or other right  
19 to acquire an interest in property.

20 “(D) NET LEASE PROPERTY.—In the case  
21 of a lessor, net lease property (within the mean-  
22 ing of subsection (i)(3)).

23 “(E) CERTAIN PREFERRED STOCK.—Stock  
24 which is fixed and preferred as to dividends and

1 does not participate in corporate growth to any  
2 significant extent.

3 “(F) STOCK IN FOREIGN CORPORA-  
4 TIONS.—Stock in a foreign corporation.

5 “(G) STOCK IN S CORPORATIONS.—Stock  
6 in an S corporation.

7 “(3) EXCEPTION FOR STOCK IN FOREIGN COR-  
8 PORATION WHICH IS REGULARLY TRADED ON NA-  
9 TIONAL OR REGIONAL EXCHANGE.—Paragraph  
10 (2)(F) shall not apply to stock in a foreign corpora-  
11 tion the stock of which is listed on the New York  
12 Stock Exchange, the American Stock Exchange, or  
13 any domestic regional exchange for which quotations  
14 are published on a regular basis or is authorized for  
15 trading on the national market system operated by  
16 the National Association of Securities Dealers other  
17 than—

18 “(A) stock of a foreign investment com-  
19 pany (within the meaning of section 1246(b)),

20 “(B) stock in a passive foreign investment  
21 company (as defined in section 1296), and

22 “(C) stock in a foreign corporation held by  
23 a United States person who meets the require-  
24 ments of section 1248(a)(2).

1       “(c) INDEXED BASIS.—For purposes of this sec-  
2 tion—

3               “(1) INDEXED BASIS.—The indexed basis for  
4 any asset is—

5                       “(A) the adjusted basis of the asset, multi-  
6 plied by

7                       “(B) the applicable inflation ratio.

8               “(2) APPLICABLE INFLATION RATIO.—The ap-  
9 plicable inflation ratio for any asset shall be deter-  
10 mined by dividing—

11                       “(A) the CPI for the calendar year preced-  
12 ing the calendar year in which the disposition  
13 takes place, by

14                       “(B) the CPI for the calendar year preced-  
15 ing the calendar year in which the taxpayer’s  
16 holding period for such asset began (or, if later,  
17 for calendar year 1992).

18       The applicable inflation ratio shall not be taken into  
19 account unless it is greater than 1. The applicable  
20 inflation ratio for any asset shall be rounded to the  
21 nearest one-hundredth.

22               “(3) CONVENTIONS.—For purposes of para-  
23 graph (2), if any asset is disposed of during any cal-  
24 endar year—

1           “(A) such disposition shall be treated as  
2           occurring on the last day of such calendar year,  
3           and

4           “(B) the taxpayer’s holding period for such  
5           asset shall be treated as beginning in the same  
6           calendar year as would be determined for an  
7           asset actually disposed of on such last day with  
8           a holding period of the same length as the ac-  
9           tual holding period of the asset involved.

10          “(4) CPI.—For purposes of this subsection, the  
11          CPI for any calendar year shall be determined under  
12          section 1(f)(4).

13          “(d) SHORT SALES.—

14                 “(1) IN GENERAL.—In the case of a short sale  
15                 of an indexed asset with a short sale period in excess  
16                 of 1 year, for purposes of this title, the amount real-  
17                 ized shall be an amount equal to the amount realized  
18                 (determined without regard to this paragraph) mul-  
19                 tiplied by the applicable inflation ratio. In applying  
20                 subsection (c)(2) for purposes of the preceding sen-  
21                 tence, the date on which the property is sold short  
22                 shall be treated as the date on which the holding pe-  
23                 riod for the asset begins and the closing date for the  
24                 sale shall be treated as the date of disposition.

1           “(2) SHORT SALE OF SUBSTANTIALLY IDEN-  
2           TICAL PROPERTY.—If the taxpayer or the taxpayer’s  
3           spouse sells short property substantially identical to  
4           an asset held by the taxpayer, the asset held by the  
5           taxpayer and the substantially identical property  
6           shall not be treated as indexed assets for the short  
7           sale period.

8           “(3) SHORT SALE PERIOD.—For purposes of  
9           this subsection, the short sale period begins on the  
10          day after property is sold and ends on the closing  
11          date for the sale.

12          “(e) TREATMENT OF REGULATED INVESTMENT  
13          COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—

14                  “(1) ADJUSTMENTS AT ENTITY LEVEL.—

15                          “(A) IN GENERAL.—Except as otherwise  
16                          provided in this paragraph, the adjustment  
17                          under subsection (a) shall be allowed to any  
18                          qualified investment entity (including for pur-  
19                          poses of determining the earnings and profits of  
20                          such entity).

21                          “(B) EXCEPTION FOR CORPORATE SHARE-  
22                          HOLDERS.—Under regulations—

23                                  “(i) in the case of a distribution by a  
24                                  qualified investment entity (directly or in-  
25                                  directly) to a corporation—

1                   “(I) the determination of whether  
2                   such distribution is a dividend shall be  
3                   made without regard to this section,  
4                   and

5                   “(II) the amount treated as gain  
6                   by reason of the receipt of any capital  
7                   gain dividend shall be increased by the  
8                   percentage by which the entity’s net  
9                   capital gain for the taxable year deter-  
10                  mined without regard to this section  
11                  exceeds the entity’s net capital gain  
12                  for such year determined with regard  
13                  to this section, and

14                  “(ii) there shall be other appropriate  
15                  adjustments (including deemed distribu-  
16                  tions) so as to ensure that the benefits of  
17                  this section are not allowed (directly or in-  
18                  directly) to corporate shareholders of quali-  
19                  fied investment entities.

20                  For purposes of the preceding sentence, any  
21                  amount includible in gross income under section  
22                  852(b)(3)(D) shall be treated as a capital gain  
23                  dividend and an S corporation shall not be  
24                  treated as a corporation.

1           “(C) EXCEPTION FOR QUALIFICATION  
2 PURPOSES.—This section shall not apply for  
3 purposes of sections 851(b) and 856(c).

4           “(D) EXCEPTION FOR CERTAIN TAXES IM-  
5 POSED AT ENTITY LEVEL.—

6           “(i) TAX ON FAILURE TO DISTRIBUTE  
7 ENTIRE GAIN.—If any amount is subject to  
8 tax under section 852(b)(3)(A) for any  
9 taxable year, the amount on which tax is  
10 imposed under such section shall be in-  
11 creased by the percentage determined  
12 under subparagraph (B)(i)(II). A similar  
13 rule shall apply in the case of any amount  
14 subject to tax under paragraph (2) or (3)  
15 of section 857(b) to the extent attributable  
16 to the excess of the net capital gain over  
17 the deduction for dividends paid deter-  
18 mined with reference to capital gain divi-  
19 dends only. The first sentence of this  
20 clause shall not apply to so much of the  
21 amount subject to tax under section  
22 852(b)(3)(A) as is designated by the com-  
23 pany under section 852(b)(3)(D).

24           “(ii) OTHER TAXES.—This section  
25 shall not apply for purposes of determining

1           the amount of any tax imposed by para-  
2           graph (4), (5), or (6) of section 857(b).

3           “(2) ADJUSTMENTS TO INTERESTS HELD IN  
4           ENTITY.—

5           “(A) IN GENERAL.—Stock in a qualified  
6           investment entity shall be an indexed asset for  
7           any calendar month in the same ratio as the  
8           fair market value of the assets held by such en-  
9           tity at the close of such month which are in-  
10          dexed assets bears to the fair market value of  
11          all assets of such entity at the close of such  
12          month.

13          “(B) RATIO OF 90 PERCENT OR MORE.—If  
14          the ratio for any calendar month determined  
15          under subparagraph (A) would (but for this  
16          subparagraph) be 90 percent or more, such  
17          ratio for such month shall be 100 percent.

18          “(C) RATIO OF 10 PERCENT OR LESS.—If  
19          the ratio for any calendar month determined  
20          under subparagraph (A) would (but for this  
21          subparagraph) be 10 percent or less, such ratio  
22          for such month shall be zero.

23          “(D) VALUATION OF ASSETS IN CASE OF  
24          REAL ESTATE INVESTMENT TRUSTS.—Nothing  
25          in this paragraph shall require a real estate in-

1 vestment trust to value its assets more fre-  
2 quently than once each 36 months (except  
3 where such trust ceases to exist). The ratio  
4 under subparagraph (A) for any calendar  
5 month for which there is no valuation shall be  
6 the trustee's good faith judgment as to such  
7 valuation.

8 “(3) QUALIFIED INVESTMENT ENTITY.—For  
9 purposes of this subsection, the term ‘qualified in-  
10 vestment entity’ means—

11 “(A) a regulated investment company  
12 (within the meaning of section 851), and

13 “(B) a real estate investment trust (within  
14 the meaning of section 856).

15 “(f) OTHER PASS-THRU ENTITIES.—

16 “(1) PARTNERSHIPS.—

17 “(A) IN GENERAL.—In the case of a part-  
18 nership, the adjustment made under subsection  
19 (a) at the partnership level shall be passed  
20 through to the partners (but only for purposes  
21 of determining the income of partners who are  
22 individuals).

23 “(B) SPECIAL RULE IN THE CASE OF SEC-  
24 TION 754 ELECTIONS.—In the case of a transfer  
25 of an interest in a partnership with respect to

1           which the election provided in section 754 is in  
2           effect—

3                   “(i) the adjustment under section  
4                   743(b)(1) shall, with respect to the trans-  
5                   feror partner, be treated as a sale of the  
6                   partnership assets for purposes of applying  
7                   this section, and

8                   “(ii) with respect to the transferee  
9                   partner, the partnership’s holding period  
10                  for purposes of this section in such assets  
11                  shall be treated as beginning on the date  
12                  of such adjustment.

13                  “(2) S CORPORATIONS.—In the case of an S  
14                  corporation, the adjustment made under subsection  
15                  (a) at the corporate level shall be passed through to  
16                  the shareholders. This section shall not apply for  
17                  purposes of determining the amount of any tax im-  
18                  posed by section 1374 or 1375.

19                  “(3) COMMON TRUST FUNDS.—In the case of a  
20                  common trust fund, the adjustment made under sub-  
21                  section (a) at the trust level shall be passed through  
22                  to the participants (but only for purposes of deter-  
23                  mining the income of participants who are individ-  
24                  uals).

1       “(g) DISPOSITIONS BETWEEN RELATED PERSONS.—  
2 This section shall not apply to any sale or other disposition  
3 of property between related persons (within the meaning  
4 of section 465(b)(3)(C)) if such property, in the hands of  
5 the transferee, is of a character subject to the allowance  
6 for depreciation provided in section 167.

7       “(h) TRANSFERS TO INCREASE INDEXING ADJUST-  
8 MENT.—If any person transfers cash, debt, or any other  
9 property to another person and the principal purpose of  
10 such transfer is to secure or increase an adjustment under  
11 subsection (a), the Secretary may disallow part or all of  
12 such adjustment or increase.

13       “(i) SPECIAL RULES.—For purposes of this section—

14               “(1) TREATMENT AS SEPARATE ASSET.—In the  
15 case of any asset, the following shall be treated as  
16 a separate asset:

17                       “(A) A substantial improvement to prop-  
18 erty.

19                       “(B) In the case of stock of a corporation,  
20 a substantial contribution to capital.

21                       “(C) Any other portion of an asset to the  
22 extent that separate treatment of such portion  
23 is appropriate to carry out the purposes of this  
24 section.

1           “(2) ASSETS WHICH ARE NOT INDEXED ASSETS  
2 THROUGHOUT HOLDING PERIOD.—The applicable in-  
3 flation ratio shall be appropriately reduced for peri-  
4 ods during which the asset was not an indexed asset.

5           “(3) NET LEASE PROPERTY DEFINED.—The  
6 term ‘net lease property’ means leased property  
7 where—

8                   “(A) the term of the lease (taking into ac-  
9 count options to renew) was 50 percent or more  
10 of the useful life of the property, and

11                   “(B) for the period of the lease, the sum  
12 of the deductions with respect to such property  
13 which are allowable to the lessor solely by rea-  
14 son of section 162 (other than rents and reim-  
15 bursed amounts with respect to such property)  
16 is 15 percent or less of the rental income pro-  
17 duced by such property.

18           “(j) REGULATIONS.—The Secretary shall prescribe  
19 such regulations as may be necessary or appropriate to  
20 carry out the purposes of this section.”

21           (b) CLERICAL AMENDMENT.—The table of sections  
22 for part II of subchapter O of chapter 1 is amended by  
23 inserting after the item relating to section 1021 the follow-  
24 ing new item:

“Sec. 1022. Indexing of certain assets acquired after 1991 for  
purposes of determining gain.”

1       (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to dispositions of any property  
3 after the date of the enactment of this Act.

○