

115TH CONGRESS  
1ST SESSION

# S. 1005

To amend the Internal Revenue Code of 1986 to modernize the tax treatment of derivatives and their underlying investments, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MAY 2, 2017

Mr. WYDEN 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 modernize the tax treatment of derivatives and their underlying investments, 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 (a) SHORT TITLE.—This Act may be cited as the  
5 “Modernization of Derivatives Tax Act of 2017”.

6 (b) AMENDMENT OF 1986 CODE.—Except as other-  
7 wise expressly provided, whenever in this Act an amend-  
8 ment or repeal is expressed in terms of an amendment  
9 to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-  
 2 sion of the Internal Revenue Code of 1986.

3 **SEC. 2. MODERNIZATION OF TAX TREATMENT OF CERTAIN**  
 4 **DERIVATIVES.**

5 (a) IN GENERAL.—Subchapter E of chapter 1 is  
 6 amended by adding at the end the following new part:

7 **“PART IV—TAX TREATMENT OF DERIVATIVES**  
 8 **AND SIMILAR CONTRACTS**

“SUBPART A. DERIVATIVES

“SUBPART B. SIMILAR CONTRACTS

9 **“Subpart A—Derivatives**

“Sec. 491. Rules for treatment of derivatives.

“Sec. 492. Investment hedging units.

“Sec. 493. Derivative defined.

10 **“SEC. 491. RULES FOR TREATMENT OF DERIVATIVES.**

11 “(a) IN GENERAL.—For purposes of this title, if  
 12 there is a taxable event with respect to a derivative or an  
 13 underlying investment—

14 “(1) notwithstanding any other provision of this  
 15 title, except as provided in subsection (b)(3)(A) or  
 16 section 1032, gain or loss shall be recognized and  
 17 taken into account in the taxable year in which the  
 18 taxable event occurs, and

19 “(2) proper adjustment shall be made in the  
 20 amount of any subsequent gain or loss for gain or  
 21 loss taken into account by reason of paragraph (1).

1 “(b) RULES RELATING TO GAIN OR LOSS.—Notwith-  
2 standing any other provision of this title—

3 “(1) CHARACTER AND SOURCE OF GAIN OR  
4 LOSS.—

5 “(A) CHARACTER.—Except as provided in  
6 paragraph (3)(B), any item of income, deduc-  
7 tion, gain, or loss taken into account under sub-  
8 section (a) with respect to a taxable event shall  
9 be treated as—

10 “(i) ordinary income or loss, and

11 “(ii) attributable to a trade or busi-  
12 ness of the taxpayer for purposes of sec-  
13 tions 62(a) and 172(d)(4).

14 “(B) SOURCE OF GAIN OR LOSS FROM DE-  
15 RIVATIVES.—In the case of a taxable event with  
16 respect to a derivative, any item of income, de-  
17 duction, gain, or loss taken into account under  
18 subsection (a) shall be treated as derived from  
19 sources within the country of residence of the  
20 taxpayer.

21 “(2) DETERMINATION OF AMOUNT.—

22 “(A) IN GENERAL.—The amount of gain  
23 or loss taken into account under subsection (a)  
24 with respect to a taxable event shall be—

1 “(i) in the case of a taxable event in-  
 2 volving the termination or transfer of a de-  
 3 rivative or the sale or exchange of an un-  
 4 derlying investment, the amount of gain or  
 5 loss determined under this title with re-  
 6 spect to the taxable event, or

7 “(ii) in the case of any other taxable  
 8 event, the amount of gain or loss which  
 9 would be determined under this title if, im-  
 10 mediately before the taxable event—

11 “(I) in the case of a derivative,  
 12 the derivative were terminated or  
 13 transferred at its fair market value, or

14 “(II) in the case of an underlying  
 15 investment, the investment were sold  
 16 or exchanged at its fair market value.

17 “(B) RELIANCE ON VALUATION.—For pur-  
 18 poses of subparagraph (A), the taxpayer may  
 19 rely on a valuation which is—

20 “(i) provided to the taxpayer by a  
 21 broker under section 6045(b), or

22 “(ii) determined under an applicable  
 23 financial statement.

24 “(3) SPECIAL RULES FOR TAXABLE EVENTS  
 25 WITH RESPECT TO INVESTMENT HEDGING UNITS.—

1           “(A) IN GENERAL.—In the case of a tax-  
2           able event described in subsection (c)(2) with  
3           respect to a derivative or underlying investment  
4           (other than a termination or transfer of the de-  
5           rivative or the sale or exchange of the under-  
6           lying investment)—

7                   “(i) notwithstanding subsection (a),  
8                   built-in loss (if any) with respect to the de-  
9                   rivative or underlying investment shall not  
10                  be recognized and shall not be taken into  
11                  account by reason of such taxable event,  
12                  and

13                  “(ii) notwithstanding paragraph (1),  
14                  built-in gain (if any) with respect to the  
15                  underlying investment shall be treated as  
16                  long-term or short-term capital gain if the  
17                  built-in gain would have been so treated if  
18                  the investment were sold or exchanged at  
19                  its fair market value immediately before  
20                  the time the built-in gain is determined  
21                  under subparagraph (D).

22           “(B) IDENTIFICATION.—For purposes of  
23           this paragraph, the determination of which por-  
24           tions of an underlying investment have been  
25           deemed sold or exchanged in a taxable event

1 shall be made in the same manner as if there  
2 had been an actual sale or exchange.

3 “(C) BUILT-IN LOSS.—For purposes of  
4 this section, the term ‘built-in loss’ means, with  
5 respect to any derivative or underlying invest-  
6 ment in an investment hedging unit, any loss  
7 which would have been recognized and taken  
8 into account under subsection (a) if the deriva-  
9 tive were terminated or transferred, or the un-  
10 derlying investment were sold or exchanged, at  
11 its fair market value as of the later of the time  
12 that the investment hedging unit was estab-  
13 lished or the time the derivative or the under-  
14 lying investment became part of the investment  
15 hedging unit.

16 “(D) BUILT-IN GAIN.—For purposes of  
17 this section, the term ‘built-in gain’ means, with  
18 respect to any underlying investment in an in-  
19 vestment hedging unit, any gain which would  
20 have been recognized and taken into account  
21 under subsection (a) if the underlying invest-  
22 ment were sold or exchanged at its fair market  
23 value as of the later of the time that the invest-  
24 ment hedging unit was established or the time

1           the underlying investment became part of the  
2           investment hedging unit.

3           “(c) TAXABLE EVENT.—For purposes of this part,  
4 the term ‘taxable event’ means—

5           “(1) with respect to any derivative which is not  
6           part of an investment hedging unit—

7           “(A) the termination or transfer of such  
8           derivative, and

9           “(B) the close of any taxable year if the  
10          taxpayer has rights or obligations with respect  
11          to such derivative at such time, and

12          “(2) with respect to all derivatives and under-  
13          lying investments which are part of the same invest-  
14          ment hedging unit—

15          “(A) the establishment of the investment  
16          hedging unit,

17          “(B) the termination or transfer of any  
18          such derivative,

19          “(C) the sale or exchange of all or any por-  
20          tion of any such underlying investment,

21          “(D) the entering into of another deriva-  
22          tive, or the acquisition of an additional amount  
23          of such underlying investment, after the estab-  
24          lishment of the investment hedging unit if such  
25          derivative or additional amount is treated as

part of the investment hedging unit under section 492, and

“(E) in the case of—

“(i) an investment hedging unit with respect to which an election is in effect under section 492(b), the close of each business day, and

“(ii) any other investment hedging unit, the close of any taxable year if the applicable hedging period with respect to such unit includes such close.

“(3) TERMINATION OR TRANSFER.—For purposes of this part, the term ‘termination or transfer’ includes, with respect to any derivative, any termination or transfer by offsetting, by taking or making delivery, by exercise or being exercised, by assignment or being assigned, by lapse, by sale or other disposition, by assumption, or otherwise.

“(d) TREATMENT OF PAYMENTS WITH RESPECT TO CERTAIN DERIVATIVES.—Notwithstanding any other provision of this title—

“(1) IN GENERAL.—Except as provided in regulations prescribed by the Secretary, in the case of a payment pursuant to a derivative (other than an option)—



1           “(A) any item of income, deduction, gain,  
 2           or loss with respect to the payment shall be  
 3           taken into account for purposes of this title at  
 4           the time of the payment, and

5           “(B) proper adjustment shall be made in  
 6           the amount of any subsequent gain or loss for  
 7           items taken into account by reason of subpara-  
 8           graph (A).

9           This paragraph shall not apply to a payment in con-  
 10          nection with a taxable event.

11          “(2) RULES RELATING TO CHARACTER AND  
 12          SOURCE OF GAIN OR LOSS.—In the case of any item  
 13          of income, deduction, gain, or loss with respect to  
 14          payments described in paragraph (1)—

15               “(A) the rules of subsection (b)(1)(A) shall  
 16               apply in determining the character of such  
 17               item, and

18               “(B) except as provided in section 871(m),  
 19               the rule of subsection (b)(1)(B) shall apply in  
 20               determining the source of such item.

21          “(e) SUSPENSION OF HOLDING PERIOD WHILE UN-  
 22          DERLYING INVESTMENT PART OF HEDGING UNIT.—For  
 23          purposes of section 1222, in the case of any underlying  
 24          investment which is part of an investment hedging unit,  
 25          the holding period for such investment shall not include

1 any period during which the underlying investment is part  
 2 of such unit.

3 “(f) APPLICABLE FINANCIAL STATEMENT.—For  
 4 purposes of this part, the term ‘applicable financial state-  
 5 ment’ means—

6 “(1) a financial statement which is certified as  
 7 being prepared in accordance with generally accept-  
 8 ed accounting principles and which is—

9 “(A) a 10-K (or successor form), or an-  
 10 nual statement to shareholders, required to be  
 11 filed by the taxpayer with the United States Se-  
 12 curities and Exchange Commission,

13 “(B) an audited financial statement of the  
 14 taxpayer which is used for—

15 “(i) credit purposes,

16 “(ii) reporting to shareholders, part-  
 17 ners, or other proprietors, or to bene-  
 18 ficiaries, or

19 “(iii) any other substantial nontax  
 20 purpose,

21 but only if there is no statement of the taxpayer  
 22 described in subparagraph (A), or

23 “(C) filed by the taxpayer with any other  
 24 Federal agency for purposes other than Federal  
 25 tax purposes, but only if there is no statement

1 of the taxpayer described in subparagraph (A)  
2 or (B),

3 “(2) a financial statement which is made on the  
4 basis of international financial reporting standards  
5 and is filed by the taxpayer with an agency of a for-  
6 eign government which is equivalent to the United  
7 States Securities and Exchange Commission and  
8 which has reporting standards not less stringent  
9 than the standards required by such Commission,  
10 but only if there is no statement of the taxpayer de-  
11 scribed in paragraph (1), or

12 “(3) a financial statement filed by the taxpayer  
13 with any other regulatory or governmental body  
14 specified by the Secretary, but only if there is no  
15 statement of the taxpayer described in paragraph  
16 (1) or (2).

17 **“SEC. 492. INVESTMENT HEDGING UNITS.**

18 “(a) INVESTMENT HEDGING UNIT.—For purposes of  
19 this part—

20 “(1) IN GENERAL.—Except as provided in sub-  
21 section (b)—

22 “(A) a taxpayer shall be treated as having  
23 an investment hedging unit with respect to an  
24 underlying investment during any applicable

1 hedging period with respect to the underlying  
 2 investment, and

3 “(B) subject to paragraph (3), such invest-  
 4 ment hedging unit shall at any time during the  
 5 applicable hedging period consist of the fol-  
 6 lowing held by the taxpayer at such time:

7 “(i) Each derivative with respect to  
 8 the underlying investment which by itself,  
 9 or in combination with 1 or more other de-  
 10 rivatives, has a delta with respect to any  
 11 portion of the underlying investment which  
 12 is within the range beginning with minus  
 13 0.7 and ending with minus 1.0.

14 “(ii) The portions of the underlying  
 15 investment described in clause (i) with re-  
 16 spect to which the derivatives have the  
 17 delta described in clause (i).

18 “(2) APPLICABLE HEDGING PERIOD.—The term  
 19 ‘applicable hedging period’ means, with respect to  
 20 any underlying investment of a taxpayer, a contin-  
 21 uous period—

22 “(A) beginning with the first time (after a  
 23 period which is not an applicable hedging pe-  
 24 riod) the taxpayer holds 1 or more of the de-  
 25 rivatives with respect to the underlying invest-

1           ment, and 1 or more portions of the underlying  
2           investment, which are described in paragraph  
3           (1)(B), and

4           “(B) ending with the time none of such de-  
5           rivatives and portions are so described.

6           “(3) LIMITATION ON COMBINATION OF DERIVA-  
7           TIVES IN DETERMINING DELTA.—For purposes of  
8           paragraph (1)(B), the determination of which de-  
9           rivatives with respect to an underlying investment  
10          have a delta within the range described in paragraph  
11          (1)(B)(i), and the portion of the underlying invest-  
12          ment with respect to which such derivatives have  
13          such delta, shall be made in the manner which re-  
14          sults in the largest portion of such underlying in-  
15          vestment being so described.

16          “(b) ELECTION WITH RESPECT TO ITEMS INCLUDED  
17          IN INVESTMENT HEDGING UNIT.—

18               “(1) IN GENERAL.—A taxpayer may elect with  
19               respect to any underlying investment to treat for  
20               purposes of this part all derivatives with respect to  
21               such underlying investment, and all of such under-  
22               lying investment, as part of an investment hedging  
23               unit.

24               “(2) ELECTION.—Any election under this sub-  
25               section with respect to an underlying investment—

1 “(A) shall apply to all derivatives with re-  
 2 spect to the underlying investment, and all of  
 3 the underlying investment, held at any time  
 4 after the election is made (including during any  
 5 period such derivatives or underlying invest-  
 6 ment are not held simultaneously), and

7 “(B) shall be irrevocable.

8 “(3) DEEMED ELECTION FOR TAXPAYERS FAIL-  
 9 ING TO IDENTIFY.—

10 “(A) IN GENERAL.—If a taxpayer—

11 “(i) does not have an election in effect  
 12 under paragraph (1) with respect to an un-  
 13 derlying investment, and

14 “(ii) fails to meet the requirements of  
 15 subsection (c) for testing and identifying  
 16 derivatives with respect to the underlying  
 17 investment,

18 the taxpayer shall be treated as having made  
 19 the election under paragraph (1).

20 “(B) TREATMENT OF ELECTION.—For  
 21 purposes of paragraph (2), a deemed election  
 22 under this paragraph—

23 “(i) shall be treated as made as of the  
 24 first time the taxpayer fails to meet the re-

1                   quirements of subsection (c) with respect  
2                   to the underlying investment, and

3                   “(ii) notwithstanding paragraph  
4                   (2)(B), may be revoked with the consent of  
5                   the Secretary.

6           “(c) DEFINITIONS AND RULES RELATING TO TAX-  
7   PAYERS IDENTIFYING INVESTMENT HEDGING UNITS.—In  
8   the case of a taxpayer with respect to which an election  
9   is not in effect under subsection (b) with respect to an  
10   underlying investment—

11           “(1) IN GENERAL.—The taxpayer shall, at the  
12           times described in paragraph (3), test the derivatives  
13           with respect to the underlying investment and make  
14           the identifications described in paragraph (2).

15           “(2) IDENTIFICATION.—

16           “(A) IN GENERAL.—The taxpayer shall  
17           identify the following with respect to an under-  
18           lying investment:

19                   “(i) Each derivative described in sub-  
20                   section (a)(1)(B)(i).

21                   “(ii) The portions of the underlying  
22                   investment described in subsection  
23                   (a)(1)(B)(ii).

24           “(B) DERIVATIVES AND UNDERLYING IN-  
25   VESTMENT NOT PART OF HEDGING UNIT.—A

1 taxpayer shall identify the derivatives with re-  
 2 spect to an underlying investment, and the por-  
 3 tions of the underlying investment, which are  
 4 not required to be identified under subpara-  
 5 graph (A).

6 “(C) PORTION MAY INCLUDE ALL OF UN-  
 7 DERLYING INVESTMENT.—For purposes of this  
 8 part, the term ‘portion’ with respect to any un-  
 9 derlying investment identified may include all of  
 10 the underlying investment.

11 “(3) TIMES IDENTIFICATIONS REQUIRED TO BE  
 12 MADE.—

13 “(A) IN GENERAL.—The taxpayer shall  
 14 test and make the identifications required  
 15 under this subsection at the following times  
 16 during any continuous period the taxpayer si-  
 17 multaneously holds 1 or more derivatives with  
 18 respect to an underlying investment and 1 or  
 19 more portions of the underlying investment:

20 “(i) The beginning of the period.

21 “(ii) Immediately after the taxpayer  
 22 (during such period)—

23 “(I) enters into another deriva-  
 24 tive with respect to the underlying in-  
 25 vestment or acquires an additional



1 amount of such underlying invest-  
2 ment, or

3 “(II) terminates or transfers 1 or  
4 more derivatives with respect to the  
5 underlying investment or sells or ex-  
6 changes any portion of the underlying  
7 investment, except that no testing and  
8 identification shall be required under  
9 this subclause with respect to any  
10 such transaction if the taxpayer does  
11 not have an investment hedging unit  
12 with respect to the underlying invest-  
13 ment immediately before such trans-  
14 action.

15 “(iii) Such other times during such  
16 period as the Secretary may prescribe by  
17 regulations or other guidance.

18 “(B) NO OTHER TIMES FOR TESTING.—  
19 Except as provided by the Secretary, there shall  
20 not be taken into account for purposes of this  
21 part any testing and identification done by the  
22 taxpayer with respect to an underlying invest-  
23 ment at a time other than the times required  
24 under subparagraph (A).

1           “(4) MANNER.—A taxpayer shall be treated as  
 2           timely making the identifications required under this  
 3           subsection if derivatives with respect to, and por-  
 4           tions of, an underlying investment are clearly identi-  
 5           fied as part of (or as not part of) the investment  
 6           hedging unit for purposes of this paragraph before  
 7           the close of the day on which the identification is re-  
 8           quired (or such other time as the Secretary may pre-  
 9           scribe).

10           “(5) TREATMENT OF INCORRECT IDENTIFICA-  
 11           TION OF HEDGING TRANSACTIONS.—The Secretary  
 12           shall prescribe regulations to properly characterize  
 13           any income, gain, expense, or loss arising from any  
 14           derivative or underlying investment which is incor-  
 15           rectly identified under paragraph (2) as being part  
 16           of, or not being part of, an investment hedging unit.

17           “(d) DELTA.—For purposes of this section—

18           “(1) IN GENERAL.—The term ‘delta’ means,  
 19           with respect to any derivative and underlying invest-  
 20           ment, the ratio of the expected change in the fair  
 21           market value of the derivative to any change in the  
 22           fair market value of the underlying investment.

23           “(2) METHOD OF DETERMINATION.—The delta  
 24           with respect to any derivative with respect to an un-

derlying investment (or any combination of such derivatives) shall be determined—

“(A) in a commercially reasonable manner,

and

“(B) except as provided by the Secretary,

in a manner which is consistent with the manner

used by the taxpayer or the taxpayer’s

broker for purposes of an applicable financial

statement.

“(3) TIME FOR MAKING DETERMINATION.—The

delta with respect to any derivative and underlying

investment shall be determined as of any date the

taxpayer is required to make the identifications described

in subsection (c).

“(4) MULTIPLE UNDERLYING INVESTMENTS.—

“(A) IN GENERAL.—Except as provided in

subparagraph (B), if the value of a derivative is

determined by reference to more than 1 underlying

investment, the delta shall be determined

separately with respect to each underlying investment.

“(B) METHODS FOR CERTAIN COMBINATIONS

OF UNDERLYING INVESTMENTS.—The

Secretary may by regulations provide methods

for determining the delta of any derivative with

1           respect to certain combinations of 2 or more  
2           underlying investments.

3           “(e) OTHER DEFINITIONS AND RULES.—For pur-  
4 poses of this part—

5           “(1) UNDERLYING INVESTMENT.—

6           “(A) IN GENERAL.—The term ‘underlying  
7 investment’ means, with respect to any deriva-  
8 tive, any item—

9           “(i) which is described in any of the  
10 paragraphs (1) through (8) of section  
11 493(a) (or any item substantially the same  
12 as any such item), and

13           “(ii) by reference to which the value  
14 of the derivative is determined either di-  
15 rectly or indirectly.

16           “(B) COORDINATION WITH SECTION 475.—

17           In the case of a dealer in securities to which  
18 section 475 applies (and a dealer in commod-  
19 ities with respect to which an election is in ef-  
20 fect under section 475(e)), such term shall not  
21 include any item which, but for this subpara-  
22 graph, would be treated as an underlying in-  
23 vestment if such item is treated as a security  
24 under section 475 (including a commodity  
25 treated as a security under section 475(e)).

1           “(2) ESTABLISHMENT OF INVESTMENT HEDG-  
 2           ING UNIT.—A taxpayer shall be treated as having  
 3           established an investment hedging unit with respect  
 4           to an underlying investment—

5                   “(A) in the case of a taxpayer with an  
 6                   election in effect under subsection (b) with re-  
 7                   spect to the underlying investment, as of the  
 8                   date the election takes effect, and

9                   “(B) in the case of any other taxpayer, as  
 10                  of the beginning of each applicable hedging pe-  
 11                  riod with respect to the underlying investment.

12           “(3) RELATED PARTIES, ETC.—For purposes of  
 13           this section—

14                   “(A) ATTRIBUTION BETWEEN RELATED  
 15                   PERSONS.—Any derivative or underlying invest-  
 16                   ment held by a related party (within the mean-  
 17                   ing of subsection (f)) with respect to the tax-  
 18                   payer shall be treated as held by the taxpayer.

19                   “(B) CERTAIN FLOWTHROUGH ENTI-  
 20                   TIES.—If part or all of the income, gain, loss,  
 21                   or expense with respect to a derivative or un-  
 22                   derlying investment held by a partnership,  
 23                   trust, or other entity would properly be taken  
 24                   into account for purposes of this chapter by the  
 25                   taxpayer, then, except to the extent otherwise

1 provided in regulations, such derivative or in-  
2 vestment shall be treated as held by the tax-  
3 payer.

4 “(f) RELATED PARTY.—For purposes of this sec-  
5 tion—

6 “(1) IN GENERAL.—A person is a related party  
7 to the taxpayer if, with respect to any period during  
8 which a derivative or underlying investment is held  
9 by such person, such person—

10 “(A) is the taxpayer’s spouse,

11 “(B) is a dependent of the taxpayer or any  
12 other taxpayer with respect to whom the tax-  
13 payer is a dependent,

14 “(C) is an individual, corporation, partner-  
15 ship, trust, or estate which controls, or is con-  
16 trolled by (within the meaning of section  
17 954(d)(3)), the taxpayer or any individual de-  
18 scribed in subparagraph (A) or (B) with respect  
19 to the taxpayer (or any combination thereof),

20 “(D) is an individual retirement plan, Ar-  
21 cher MSA (as defined in section 220(d)), or  
22 health savings account (as defined in section  
23 223(d)), of the taxpayer or of any individual de-  
24 scribed in subparagraph (A) or (B) with respect  
25 to the taxpayer,

“(E) is an account under a qualified tuition program described in section 529, an ABLE account (as defined in section 529A(f)(6)), or a Coverdell education savings account (as defined in section 530(b)) if the taxpayer, or any individual described in subparagraph (A) or (B) with respect to the taxpayer, is the designated beneficiary of such account or has the right to make any decision with respect to the investment of any amount in such account,

“(F) is an account under—

“(i) a plan described in section 401(a),

“(ii) an annuity plan described in section 403(a),

“(iii) an annuity contract described in section 403(b), or

“(iv) an eligible deferred compensation plan described in section 457(b) and maintained by an employer described in section 457(e)(1)(A),

if the taxpayer or any individual described in subparagraph (A) or (B) with respect to the taxpayer has the right to make any decision

1 with respect to the investment of any amount in  
2 such account, or

3 “(G) files a consolidated return (within the  
4 meaning of section 1501) with the taxpayer for  
5 any taxable year which includes a portion of  
6 such period.

7 “(2) DETERMINATION OF MARITAL STATUS.—

8 “(A) IN GENERAL.—Except as provided in  
9 subparagraph (B), marital status shall be deter-  
10 mined under section 7703.

11 “(B) SPECIAL RULE FOR MARRIED INDIVIDUALS  
12 FILING SEPARATELY AND LIVING  
13 APART.—A husband and wife who—

14 “(i) file separate returns for any tax-  
15 able year, and

16 “(ii) live apart at all times during  
17 such taxable year,

18 shall not be treated as married individuals.

19 “(g) REGULATIONS.—The Secretary shall prescribe  
20 such regulations or other guidance as may be appropriate  
21 to carry out this section, including regulations or guidance  
22 which require in appropriate cases a taxpayer to bifurcate  
23 derivatives described in subsection (d)(4) for purposes of  
24 applying this part or which may be necessary to prevent  
25 the avoidance of the purposes of subsection (f) (including



1 treating persons as related parties if such persons are  
2 formed or availed of to avoid the purposes of such sub-  
3 section).

4 **“SEC. 493. DERIVATIVE DEFINED.**

5 “(a) IN GENERAL.—For purposes of this part, except  
6 as otherwise provided in this section, the term ‘derivative’  
7 means any contract (including any option, forward con-  
8 tract, futures contract, short position, swap, or similar  
9 contract) the value of which, or any payment or other  
10 transfer with respect to which, is (directly or indirectly)  
11 determined by reference to one or more of the following:

12 “(1) Any share of stock in a corporation.

13 “(2) Any partnership or beneficial ownership  
14 interest in a partnership or trust.

15 “(3) Any evidence of indebtedness.

16 “(4) Except as provided in subsection (b)(1),  
17 any real property.

18 “(5) Any commodity which is actively traded  
19 (within the meaning of section 1092(c)(4)).

20 “(6) Any currency.

21 “(7) Any rate, price, amount, index, formula, or  
22 algorithm.

23 “(8) Any other item as the Secretary may pre-  
24 scribe.

1 Except as provided in regulations prescribed by the Sec-  
 2 retary to prevent the avoidance of the purposes of this  
 3 part, such term shall not include any item described in  
 4 paragraphs (1) through (8).

5 “(b) EXCEPTIONS.—

6 “(1) CERTAIN REAL PROPERTY.—

7 “(A) IN GENERAL.—For purposes of this  
 8 part, the term ‘derivative’ shall not include any  
 9 contract with respect to interests in real prop-  
 10 erty (as defined in section 856(c)(5)(C)) if such  
 11 contract requires physical delivery of such real  
 12 property.

13 “(B) OPTIONS TO SETTLE IN CASH.—

14 “(i) IN GENERAL.—For purposes of  
 15 subparagraph (A), a contract which pro-  
 16 vides for an option of cash settlement shall  
 17 not be treated as requiring physical deliv-  
 18 ery of real property unless the option is—

19 “(I) not exercisable uncondition-  
 20 ally, and

21 “(II) exercisable only in unusual  
 22 and exceptional circumstances.

23 “(ii) OPTION OF CASH SETTLE-  
 24 MENT.—For purposes of clause (i), a con-  
 25 tract provides an option of cash settlement

1 if the contract settles in (or could be set-  
 2 tled in) cash or property other than the  
 3 underlying real property.

4 “(2) HEDGING TRANSACTIONS.—

5 “(A) IN GENERAL.—For purposes of this  
 6 part, the term ‘derivative’ shall not include any  
 7 contract which is part of a hedging transaction  
 8 (as defined in section 1221(b)).

9 “(B) SECTION 988 HEDGING TRANS-  
 10 ACTIONS.—For exception for section 988 hedg-  
 11 ing transactions, see section 988(d)(1).

12 “(3) SECURITIES LENDING, SALE-REPURCHASE,  
 13 AND SIMILAR FINANCING TRANSACTIONS.—To the  
 14 extent provided by the Secretary, for purposes of  
 15 this part, the term ‘derivative’ shall not include the  
 16 right to the return of the same or substantially iden-  
 17 tical securities transferred in a securities lending  
 18 transaction, sale-repurchase transaction, or similar  
 19 financing transaction.

20 “(4) OPTIONS RECEIVED IN CONNECTION WITH  
 21 THE PERFORMANCE OF SERVICES.—For purposes of  
 22 this part, the term ‘derivative’ shall not include any  
 23 option described in section 83(e)(3) received in con-  
 24 nection with the performance of services.

1           “(5) INSURANCE CONTRACTS, ANNUITIES, AND  
 2           ENDOWMENTS.—For purposes of this part, the term  
 3           ‘derivative’ shall not include any insurance, annuity,  
 4           or endowment contract issued by an insurance com-  
 5           pany to which subchapter L applies (or issued by  
 6           any foreign corporation to which such subchapter  
 7           would apply if such foreign corporation were a do-  
 8           mestic corporation).

9           “(6) DERIVATIVES WITH RESPECT TO STOCK  
 10          OF MEMBERS OF SAME WORLDWIDE AFFILIATED  
 11          GROUP.—For purposes of this part, the term ‘deriv-  
 12          ative’ shall not include any derivative (determined  
 13          without regard to this paragraph) with respect to  
 14          stock issued by any member of the same worldwide  
 15          affiliated group (as defined in section 864(f)) in  
 16          which the taxpayer is a member.

17          “(7) COMMODITIES USED IN NORMAL COURSE  
 18          OF TRADE OR BUSINESS.—For purposes of this part,  
 19          the term ‘derivative’ shall not include any contract  
 20          with respect to any commodity if—

21                 “(A) such contract requires physical deliv-  
 22                 ery with the option of cash settlement only in  
 23                 unusual and exceptional circumstances, and

24                 “(B) such commodity is used (and is used  
 25                 in quantities with respect to which such deriva-

1           tive relates) in the normal course of the tax-  
 2           payer's trade or business (or, in the case of an  
 3           individual, for personal consumption).

4           “(c) CONTRACTS WITH EMBEDDED DERIVATIVE  
 5 COMPONENTS.—

6           “(1) IN GENERAL.—If a contract has derivative  
 7           and nonderivative components, then each derivative  
 8           component shall be treated as a derivative for pur-  
 9           poses of this part. If the derivative component can-  
 10          not be separately valued, then the entire contract  
 11          shall be treated as a derivative for purposes of this  
 12          part.

13          “(2) EXCEPTION FOR CERTAIN EMBEDDED DE-  
 14          RIVATIVE COMPONENTS OF DEBT INSTRUMENTS.—A  
 15          debt instrument shall not be treated as having a de-  
 16          rivative component merely because—

17               “(A) such debt instrument is denominated  
 18               in a nonfunctional currency (as defined in sec-  
 19               tion 988(c)(1)(C)(ii)), or

20               “(B) payments with respect to such debt  
 21               instrument are determined by reference to the  
 22               value of a nonfunctional currency (as so de-  
 23               fined).

24          “(d) TREATMENT OF AMERICAN DEPOSITORY RE-  
 25 RECEIPTS AND SIMILAR INSTRUMENTS.—Except as other-

1 wise provided by the Secretary, for purposes of this part,  
 2 American depository receipts (and similar instruments)  
 3 with respect to shares of stock in foreign corporations  
 4 shall be treated as shares of stock in such foreign corpora-  
 5 tions.

6 **“Subpart B—Similar Contracts**

“Sec. 494. Tax treatment of contracts similar to derivatives.

7 **“SEC. 494. TAX TREATMENT OF CONTRACTS SIMILAR TO**  
 8 **DERIVATIVES.**

9 “(a) IN GENERAL.—For purposes of this title, if  
 10 there is a taxable transaction with respect to any applica-  
 11 ble property interest, then, notwithstanding any other pro-  
 12 vision of this title other than section 1032, gain or loss  
 13 attributable to the taxable transaction shall be considered  
 14 gain or loss from the sale or exchange of property which  
 15 has the same character as the property to which the appli-  
 16 cable property interest relates has (or would have) in the  
 17 hands of the taxpayer.

18 “(b) DEFINITIONS.—For purposes of this section—

19 “(1) APPLICABLE PROPERTY INTEREST.—The  
 20 term ‘applicable property interest’ means any right  
 21 or obligation with respect to property other than—

22 “(A) a derivative (as defined in section  
 23 493), or

1 “(B) any position in applicable property to  
2 which section 1092 applies.

3 “(2) TAXABLE TRANSACTION.—The term ‘tax-  
4 able transaction’ means, with respect to any applica-  
5 ble property interest—

6 “(A) any termination or transfer (as de-  
7 fined in section 491(c)(3)) of such interest, or

8 “(B) any payment in fulfillment or partial  
9 fulfillment of such interest.”.

10 **SEC. 3. COORDINATION OF NEW RULES WITH EXISTING**  
11 **RULES.**

12 (a) COORDINATION WITH RULES FOR DEALERS AND  
13 TRADERS.—

14 (1) DERIVATIVES NOT TREATED AS SECURI-  
15 TIES.—Section 475(c)(2) is amended—

16 (A) by adding “and” at the end of sub-  
17 paragraph (C),

18 (B) by striking subparagraphs (D) and (E)  
19 and by redesignating subparagraph (F) as sub-  
20 paragraph (D),

21 (C) by striking “subparagraph (A), (B),  
22 (C), (D), or (E)” in subparagraph (D)(i), as so  
23 redesignated, and inserting “subparagraph (A),  
24 (B), or (C)”, and

1 (D) by amending the last sentence to read  
 2 as follows: “Such term shall not include any de-  
 3 rivative to which section 491(a) applies.”.

4 (2) DERIVATIVES NOT TREATED AS COMMOD-  
 5 ITIES.—Section 475(e)(2) is amended—

6 (A) by adding “and” at the end of sub-  
 7 paragraph (A),

8 (B) by striking subparagraphs (B) and (C)  
 9 and by redesignating subparagraph (D) as sub-  
 10 paragraph (B), and

11 (C) by striking “subparagraph (A), (B) or  
 12 (C)” in subparagraph (B)(i), as so redesign-  
 13 ated, and inserting “subparagraph (A)”.

14 (3) CONFORMING AMENDMENTS.—

15 (A) Section 475(b) is amended by striking  
 16 paragraph (4).

17 (B) Section 475(d)(2)(B) is amended—

18 (i) by striking “subsection  
 19 (c)(2)(F)(iii)” and inserting “subsection  
 20 (c)(2)(D)(iii)”, and

21 (ii) by striking “subsection (c)(2)(F)”  
 22 and inserting “subsection (c)(2)(D)”.

23 (C) Section 475(f)(1)(D) is amended by  
 24 striking “subsections (b)(4) and (d)” and in-  
 25 serting “subsection (d)”.



1 (b) COORDINATION WITH STRADDLE RULES.—

2 (1) IN GENERAL.—Section 1092 is amended to  
3 read as follows:

4 **“SEC. 1092. STRADDLES.**

5 “(a) RECOGNITION OF LOSS IN CASE OF STRAD-  
6 DLES, ETC.—

7 “(1) LIMITATION ON RECOGNITION OF LOSS.—

8 “(A) IN GENERAL.—Any loss with respect  
9 to 1 or more positions shall be taken into ac-  
10 count for any taxable year only to the extent  
11 that the amount of such loss exceeds the unrec-  
12 ognized gain (if any) with respect to 1 or more  
13 positions which were offsetting positions with  
14 respect to 1 or more positions from which the  
15 loss arose.

16 “(B) CARRYOVER OF LOSS.—Any loss  
17 which may not be taken into account under  
18 subparagraph (A) for any taxable year shall,  
19 subject to the limitations under subparagraph  
20 (A), be treated as sustained in the succeeding  
21 taxable year.

22 “(2) UNRECOGNIZED GAIN.—For purposes of  
23 this subsection—

24 “(A) IN GENERAL.—The term ‘unrecog-  
25 nized gain’ means—

“(i) in the case of any position held by the taxpayer as of the close of the taxable year, the amount of gain which would be taken into account with respect to such position if such position were sold on the last business day of such taxable year at its fair market value, and

“(ii) in the case of any position with respect to which, as of the close of the taxable year, gain has been realized but not recognized, the amount of gain so realized.

“(B) REPORTING OF GAIN.—Each taxpayer shall disclose to the Secretary, at such time and in such manner and form as the Secretary may prescribe by regulations—

“(i) each position (whether or not part of a straddle) with respect to which, as of the close of the taxable year, there is unrecognized gain, and

“(ii) the amount of such unrecognized gain.

The Secretary may waive the requirement to report under this subparagraph with respect to any position if such reporting is not required to carry out the purposes of this section.

1           “(3) SPECIAL RULES FOR PHYSICALLY SET-  
2           TLED POSITIONS.—For purposes of this subsection,  
3           if a taxpayer settles a position which is part of a  
4           straddle by delivering property to which the position  
5           relates (and such position, if terminated, would re-  
6           sult in a realization of a loss), then such taxpayer  
7           shall be treated as if such taxpayer—

8                   “(A) terminated the position for its fair  
9                   market value immediately before the settlement,  
10                  and

11                  “(B) sold the property so delivered by the  
12                  taxpayer at its fair market value.

13           “(b) REGULATIONS.—The Secretary shall prescribe  
14           such regulations with respect to gain or loss on positions  
15           which are a part of a straddle as may be appropriate to  
16           carry out the purposes of this section and section 263(g).  
17           To the extent consistent with such purposes, such regula-  
18           tions shall include rules applying the principles of sub-  
19           sections (a) and (d) of section 1091 and of subsections  
20           (b) and (d) of section 1233 (as in effect before their re-  
21           peal).

22           “(c) DEFINITIONS AND RULES RELATING TO STRAD-  
23           DLES.—For purposes of this section—

1           “(1) STRADDLE DEFINED.—The term ‘straddle’  
2       means offsetting positions with respect to applicable  
3       property.

4           “(2) OFFSETTING POSITIONS.—A taxpayer  
5       holds offsetting positions with respect to applicable  
6       property if the taxpayer holds any position which by  
7       itself, or in combination with 1 or more other posi-  
8       tions held by the taxpayer, has a delta with respect  
9       to any other position held by the taxpayer which is  
10      within the range beginning with minus 0.7 and end-  
11      ing with minus 1.0. For purposes of this paragraph,  
12      positions shall be taken into account whether or not  
13      they are in the same applicable property.

14          “(3) DELTA.—

15               “(A) IN GENERAL.—The term ‘delta’  
16       means, with respect to any positions in applica-  
17       ble property, the ratio of the expected change in  
18       the fair market value of 1 position to any  
19       change in the fair market value of another posi-  
20       tion.

21               “(B) METHOD OF DETERMINATION.—The  
22       delta with respect to any position in applicable  
23       property with respect to another position in ap-  
24       plicable property (or any combination of such  
25       positions) shall be determined—

1 “(i) in a commercially reasonable  
2 manner, and

3 “(ii) except as provided by the Sec-  
4 retary, in a manner which is consistent  
5 with the manner used by the taxpayer or  
6 the taxpayer’s broker for purposes of an  
7 applicable financial statement.

8 “(C) TIMING OF DELTA DETERMINATION  
9 AND OTHER SPECIAL RULES.—Rules similar to  
10 the rules of paragraphs (3) and (4) of section  
11 492(d) shall apply for purposes of this para-  
12 graph.

13 “(4) APPLICABLE PROPERTY AND POSITION DE-  
14 FINED.—

15 “(A) APPLICABLE PROPERTY.—The term  
16 ‘applicable property’ means any item which is—

17 “(i) described in paragraph (1), (2),  
18 (3), (5), (6), (7), or (8) of section 493(a)  
19 (or any item substantially the same as any  
20 such item), and

21 “(ii) of a type which is actively trad-  
22 ed.

23 “(B) POSITION.—

1 “(i) IN GENERAL.—The term ‘posi-  
 2 tion’ means an interest in applicable prop-  
 3 erty.

4 “(ii) DERIVATIVES EXCLUDED.—Such  
 5 term shall not include a derivative (as de-  
 6 fined in section 493).

7 “(5) POSITIONS HELD BY RELATED PERSONS,  
 8 ETC.—

9 “(A) IN GENERAL.—In determining wheth-  
 10 er 2 or more positions are offsetting, the tax-  
 11 payer shall be treated as holding any position  
 12 held by a related party (within the meaning of  
 13 section 492(f)).

14 “(B) CERTAIN FLOWTHROUGH ENTI-  
 15 TIES.—If part or all of the gain or loss with re-  
 16 spect to a position held by a partnership, trust,  
 17 or other entity would properly be taken into ac-  
 18 count for purposes of this chapter by a tax-  
 19 payer, then, except to the extent otherwise pro-  
 20 vided in regulations, such position shall be  
 21 treated as held by the taxpayer.

22 “(6) SPECIAL RULES FOR FOREIGN CUR-  
 23 RENCY.—

24 “(A) POSITION TO INCLUDE INTEREST IN  
 25 CERTAIN DEBT.—For purposes of paragraph

1           (4)(B)(i), an obligor’s interest in a nonfunc-  
 2           tional currency denominated debt obligation is  
 3           treated as a position in the nonfunctional cur-  
 4           rency.

5           “(B) ACTIVELY TRADED REQUIREMENT.—  
 6           For purposes of paragraph (4)(A)(ii), foreign  
 7           currency for which there is an active interbank  
 8           market is presumed to be actively traded.

9           “(d) EXCEPTION FOR HEDGING TRANSACTIONS AND  
 10          INVESTMENT HEDGING UNITS.—This section shall not  
 11          apply in the case of—

12           “(1) any hedging transaction (as defined in sec-  
 13          tion 1221(b)), and

14           “(2) any investment hedging unit (as defined in  
 15          section 492).

16          “(e) CROSS REFERENCE.—For provisions requiring  
 17          capitalization of certain interest and carrying charges  
 18          where there is a straddle, see section 263(g).”.

19          “(2) CONFORMING AMENDMENTS.—The last sen-  
 20          tence of section 246(c)(4) is amended—

21           (A) by inserting “(as in effect before its re-  
 22          peal)” after “section 1092(c)(4)”, and

23           (B) by inserting “(as so in effect)” after  
 24          “section 1092(f)”.

1       (c) DEBT INSTRUMENTS HELD BY INSURANCE COM-  
2 PANIES.—

3           (1) IN GENERAL.—Subsection (a) of section  
4 1221 is amended by striking “or” at the end of  
5 paragraph (7), by striking the period at the end of  
6 paragraph (8) and inserting “; or”, and by adding  
7 at the end the following:

8           “(9) any bond, debenture, note, or certificate or  
9 other evidence of indebtedness held by an applicable  
10 insurance company (as defined in subsection  
11 (b)(5)).”.

12          (2) APPLICABLE INSURANCE COMPANY.—Sec-  
13 tion 1221(b), as amended by this Act, is amended  
14 by adding at the end the following:

15          “(5) APPLICABLE INSURANCE COMPANY.—For  
16 purposes of subsection (a)(9)—

17           “(A) IN GENERAL.—The term ‘applicable  
18 insurance company’ means, with respect to any  
19 taxable year, an insurance company (as defined  
20 in the last sentence of section 816(a))—

21           “(i) which is subject to tax under sec-  
22 tion 801(a)(1) or section 831(a),

23           “(ii) with respect to which sections  
24 831(b), 835, 842, and 847 do not apply,  
25 and



1 “(iii) which is not treated as a stock  
 2 insurance company solely by reason of sec-  
 3 tion 833(a)(1).

4 “(B) PERMANENT TREATMENT BY COM-  
 5 PANY AS ORDINARY ASSET.—If an asset is  
 6 treated as an asset described in subsection (a)  
 7 (9) with respect to any applicable insurance  
 8 company for any taxable year, such asset shall  
 9 be treated as so described during any subse-  
 10 quent taxable year such asset is held by such  
 11 company.”.

12 (3) REGULATIONS.—Paragraph (4) of section  
 13 1221(b) is amended—

14 (A) by striking “The Secretary” and in-  
 15 serting:

16 “(A) RELATED PARTIES.—The Secretary”,  
 17 and

18 (B) by adding at the end the following:

19 “(B) ASSETS OF INSURANCE COMPA-  
 20 NIES.—The Secretary shall prescribe such regu-  
 21 lations as may be necessary or appropriate to  
 22 carry out the purposes of subsection (a)(9), in-  
 23 cluding such regulations as may be necessary to  
 24 prevent the avoidance of Federal income tax

1 through the sale or exchange of assets described  
2 in such subsection.”.

3 (4) EFFECTIVE DATE.—

4 (A) IN GENERAL.—The amendments made  
5 by this subsection shall apply to any bond, de-  
6 benture, note, or certificate or other evidence of  
7 indebtedness held or acquired after the 90-day  
8 period beginning with the date of the enactment  
9 of this Act.

10 (B) TRANSITION RULE.—If a taxpayer has  
11 a capital loss carryover to any taxable year of  
12 the taxpayer beginning after the close of the  
13 90-day period described in subparagraph (A),  
14 the taxpayer shall, in addition to other short-  
15 term capital gain of the taxpayer (if any), treat  
16 as short-term capital gain (rather than as ordi-  
17 nary income) an amount equal to the lesser  
18 of—

19 (i) the net gain (if any) from sales or  
20 exchanges during such taxable year of as-  
21 sets to which section 1221(a)(9) of such  
22 Code (as added by paragraph (1)) applies,  
23 or

1 (ii) the capital loss carryovers to such  
 2 taxable year from taxable years beginning  
 3 before the close of such period.

4 (d) RICs ALLOWED NET OPERATING LOSS DEDUC-  
 5 TION.—

6 (1) IN GENERAL.—Paragraph (2) of section  
 7 852(b) is amended by striking subparagraph (B)  
 8 and by redesignating subparagraphs (C) through (G)  
 9 as subparagraphs (B) through (F), respectively.

10 (2) RESTRICTION ON CARRYBACK OF LOSSES.—  
 11 Subparagraph (B) of section 172(b)(1) is amend-  
 12 ed—

13 (A) by striking “REIT” each place it ap-  
 14 pears in the text and inserting “RIC or REIT”,

15 (B) by striking “part II of subchapter M  
 16 (relating to real estate investment trusts)” in  
 17 clause (iii) and inserting “part I or II of sub-  
 18 chapter M”,

19 (C) by striking “REIT’S” in the heading  
 20 for such subparagraph and inserting “RIC’s or  
 21 REIT’s”, and

22 (D) by striking “REIT” in the heading for  
 23 clause (iii) and inserting “RIC or REIT”.

24 (3) OTHER MODIFICATIONS.—Paragraph (6) of  
 25 section 172(d) is amended to read follows:

1           “(6) MODIFICATIONS RELATED TO RICS AND  
 2 REITS.—In the case of any taxable year for which  
 3 part I or II of subchapter M applies to the tax-  
 4 payer—

5           “(A) the net operating loss for such tax-  
 6 able year shall be computed by taking into ac-  
 7 count—

8           “(i) in the case of a regulated invest-  
 9 ment company, the adjustments described  
 10 in section 852(b)(2) (other than the deduc-  
 11 tion for dividends paid described in sub-  
 12 paragraph (C) thereof)), and

13           “(ii) in the case of a real estate in-  
 14 vestment trust, the adjustments described  
 15 in section 857(b)(2) (other than the deduc-  
 16 tion for dividends paid described in sub-  
 17 paragraph (B) thereof), and

18           “(B) where such taxable year is a ‘prior  
 19 taxable year’ referred to in paragraph (2) of  
 20 subsection (b), references in such paragraph to  
 21 ‘taxable income’ shall be treated as references  
 22 to—

23           “(i) in the case of a regulated invest-  
 24 ment company, regulated investment com-

1           pany taxable income (as defined in section  
2           852(b)(2)), and

3           “(ii) in the case of a real estate in-  
4           vestment trust, real estate investment tax-  
5           able income (as defined in section  
6           857(b)(2)).”.

7           (4) CONFORMING AMENDMENTS.—

8           (A) Section 852(a)(1)(A) is amended by  
9           striking “subsection (b)(2)(D)” and inserting  
10          “subsection (b)(2)(C)”.

11          (B) Section 4982(e)(1)(A) is amended by  
12          striking “and (D)” and inserting “and (C)”.

13          (5) EFFECTIVE DATE.—The amendments made  
14          by this subsection shall apply to net operating losses  
15          for taxable years ending after the 90th day after the  
16          date of the enactment of this Act.

17          (e) NONRECOGNITION OF GAIN OR LOSS FROM  
18          TRANSACTIONS BY A CORPORATION WITH RESPECT TO  
19          ITS STOCK.—

20          (1) IN GENERAL.—Section 1032 is amended to  
21          read as follows:

22          **“SEC. 1032. TRANSACTIONS BY A CORPORATION WITH RE-**  
23          **SPECT TO ITS STOCK.**

24          “(a) NONRECOGNITION ON EXCHANGE OF STOCK  
25          FOR PROPERTY.—No gain or loss shall be recognized to

1 a corporation on the receipt of money or other property  
 2 in exchange for stock of such corporation.

3 “(b) DERIVATIVE TRANSACTIONS BY A CORPORATION  
 4 WITH RESPECT TO ITS STOCK.—

5 “(1) IN GENERAL.—Except as otherwise pro-  
 6 vided in this subsection, section 1032 derivative  
 7 items of a corporation shall not be taken into ac-  
 8 count in determining such corporation’s liability for  
 9 tax under this subtitle.

10 “(2) INCOME RECOGNITION ON CERTAIN FOR-  
 11 WARD CONTRACTS.—

12 “(A) IN GENERAL.—If—

13 “(i) a corporation acquires its stock,  
 14 and

15 “(ii) such acquisition is part of a plan  
 16 (or series of related transactions) pursuant  
 17 to which the corporation enters into a for-  
 18 ward contract with respect to its stock,

19 such corporation shall include amounts in in-  
 20 come as if the excess of the amount to be re-  
 21 ceived under the forward contract over the fair  
 22 market value of the stock as of the date the  
 23 corporation entered into the forward contract  
 24 were original issue discount on a debt instru-  
 25 ment acquired on such date. The preceding sen-

1           tence shall apply only to the extent that the  
 2           amount of stock involved in the forward con-  
 3           tract does not exceed the amount acquired as  
 4           described in clause (i).

5           “(B) PLAN PRESUMED TO EXIST.—If a  
 6           corporation enters into a forward contract with  
 7           respect to its stock within the 60-day period be-  
 8           ginning on the date which is 30 days before the  
 9           date that the corporation acquires its stock,  
 10          such acquisition shall be treated as pursuant to  
 11          a plan described in subparagraph (A)(ii) unless  
 12          it is established that entering into such contract  
 13          and such acquisition are not pursuant to a plan  
 14          or series of related transactions.

15          “(c) SECTION 1032 DERIVATIVE ITEMS.—For pur-  
 16          poses of this section, the term ‘section 1032 derivative  
 17          item’ means, with respect to any corporation, any item of  
 18          income, gain, loss, or deduction if—

19               “(1) such item arises out of the rights or obli-  
 20          gations under any derivative (as defined in section  
 21          493) to the extent such derivative relates to the cor-  
 22          poration’s stock (or is attributable to any transfer or  
 23          extinguishment of any such right or obligation), or

24               “(2) such item arises under any other contract  
 25          or position but only to the extent that such item re-

1       fleets (or is determined by reference to) changes in  
2       the value of such stock or distributions thereon.

3 Such term shall not include any deduction with respect  
4 to which section 83(h) applies and shall not include any  
5 deduction for any item which is in the nature of compensa-  
6 tion for services rendered. For purposes of this subpara-  
7 graph, de minimis relationships, as determined by the Sec-  
8 retary, shall be disregarded.

9       “(d) COORDINATION WITH DERIVATIVE AND STRAD-  
10 DLE RULES.—In the case of a derivative or other contract  
11 or position described in subsection (c) which is held by  
12 a corporation with respect to its stock—

13               “(1) this section (rather than part IV of sub-  
14 chapter E or section 1092) shall apply in deter-  
15 mining the treatment of section 1032 derivative  
16 items under this subtitle, and

17               “(2) such derivative or other contract or posi-  
18 tion shall not be taken into account in determining  
19 whether the corporation has an investment hedging  
20 unit, applicable property interest, or straddle with  
21 respect to its stock for purposes of such part or sec-  
22 tion.

23       “(e) REGULATIONS.—The Secretary shall prescribe  
24 such regulations or other guidance as may be appropriate  
25 to carry out the purposes of this section, including regula-



1 tions or other guidance which treat the portion of an in-  
 2 strument which is described in subsection (c)(1) separately  
 3 from the portion of such instrument which is not so de-  
 4 scribed.

5 “(f) BASIS.—For basis of property acquired by a cor-  
 6 poration in certain exchanges for its stock, see section  
 7 362.”.

8 (2) CLERICAL AMENDMENT.—The item relating  
 9 to section 1032 in the table of sections for part III  
 10 of subchapter O of chapter 1 is amended to read as  
 11 follows:

“Sec. 1032. Transactions by a corporation with respect to its stock.”.

12 (3) EFFECTIVE DATE.—The amendments made  
 13 by this subsection shall apply to transactions entered  
 14 into after the date of the enactment of this Act.

#### 15 **SEC. 4. TECHNICAL AND CONFORMING AMENDMENTS.**

16 (a) REPEAL OF CERTAIN OTHER SUPERCEDED  
 17 RULES FOR DETERMINING CAPITAL GAINS AND  
 18 LOSSES.—

19 (1) IN GENERAL.—Part IV of subchapter P of  
 20 chapter 1 is amended by striking sections 1233,  
 21 1234, 1234A, 1234B, 1236, 1256, 1258, 1259, and  
 22 1260 (and by striking the items relating to such sec-  
 23 tions in the table of sections for such part).

1           (2) CONFORMING AMENDMENTS RELATED TO  
2 REPEAL OF SECTION 1234.—Section 6045(h)(2) is  
3 amended—

4           (A) by striking “(as defined in section  
5 1234(b)(2)(A))”, and

6           (B) by adding at the end the following:  
7 “For purposes of the preceding sentence, the  
8 term ‘closing transaction’ means any termi-  
9 nation of the taxpayer’s obligation under an op-  
10 tion in property other than through the exercise  
11 or lapse of the option.”.

12          (3) CONFORMING AMENDMENTS RELATED TO  
13 REPEAL OF SECTION 1236.—

14           (A) Section 475(d)(3)(A) is amended by  
15 striking “or section 1236(b)”.

16           (B) Section 512(b)(5) is amended by strik-  
17 ing “section 1236(c)” and inserting “section  
18 1058(c)”.

19           (C) Section 1058 is amended—

20           (i) by striking “(as defined in section  
21 1236(c))” in subsection (a), and

22           (ii) by redesignating subsection (c) as  
23 subsection (d) and by inserting after sub-  
24 section (b) the following new subsection:

1       “(c) SECURITIES.—For purposes of this section, the  
 2 term ‘security’ means any share of stock in any corpora-  
 3 tion, certificate of stock or interest in any corporation,  
 4 note, bond, debenture, or evidence of indebtedness, or any  
 5 evidence of an interest in or right to subscribe to or pur-  
 6 chase any of the foregoing.”.

7           (4) CONFORMING AMENDMENTS RELATED TO  
 8 REPEAL OF SECTION 1256.—

9           (A)(i) Section 461(i)(3)(B) is amended to  
 10 read as follows:

11           “(B) any partnership or other entity (other  
 12 than a corporation which is not an S corpora-  
 13 tion) if more than 35 percent of the losses of  
 14 such entity during the taxable year are allocable  
 15 to limited partners or limited entrepreneurs  
 16 (within the meaning of subsection (k)(4)),  
 17 and”.

18           (ii) Section 461 is amended—

19           (I) by redesignating the second sub-  
 20 section (j) (relating to farming syndicate  
 21 defined) as subsection (k), and

22           (II) by striking “subsection (j)” in  
 23 subsection (i)(4) and inserting “subsection  
 24 (k)”.

1 (B) Section 475(d)(1) is amended by strik-  
 2 ing “sections 263(g), 263A, and 1256(a)” and  
 3 inserting “sections 263(g) and 263A”.

4 (C) Section 988(c)(1) is amended by strik-  
 5 ing subparagraphs (D) and (E).

6 (D) Section 1212 is amended by striking  
 7 subsection (c).

8 (E) Section 1223 is amended by striking  
 9 paragraphs (7) and (14).

10 (F) Section 1281(b)(1)(E) is amended to  
 11 read as follows:

12 “(E) is part of a hedging transaction (as  
 13 defined in section 1221(b)) or an investment  
 14 hedging unit (as defined in section 492), or”.

15 (G) Section 1402 is amended by striking  
 16 subsection (i).

17 (H) Section 4982(e)(6)(B) is amended by  
 18 striking “sections 1256 and 1296” and insert-  
 19 ing “sections 491 and 1296”.

20 (5) CONFORMING AMENDMENTS RELATED TO  
 21 REPEAL OF SECTION 1259.—Section 475(f)(1) is  
 22 amended by striking subparagraph (C) and by redес-  
 23 ignating subparagraph (D) as subparagraph (C).

24 (b) OTHER CONFORMING AMENDMENTS.—

1           (1) Section 355(g)(2)(B)(i)(V) is amended to  
2       read as follows:

3                               “(V) any derivative (as defined in  
4                               section 493),”.

5           (2) Section 856(n)(4) is amended by inserting  
6       “or derivatives (as defined in section 493)” after  
7       “securities (as defined in section 475(e)(2))”.

8           (3) Section 857(e)(2)(C)(i) is amended by strik-  
9       ing “section 860E or 1272” and inserting “section  
10      491, 860E, or 1272”.

11          (4) Section 988(d)(1) is amended—

12                       (A) by striking “or 1256” and inserting  
13       “or 491”, and

14                       (B) by striking “1092, and 1256” and in-  
15       serting “491, and 1092”.

16          (5) Section 1091(e) is amended to read as fol-  
17       lows:

18       “(e) COORDINATION WITH MARK TO MARKET OF  
19       DERIVATIVES AND UNDERLYING INVESTMENTS.—For  
20       purposes of this section, the term ‘stock or securities’ shall  
21       not include—

22                       “(1) any derivative (as defined in section 493),  
23       or

24                       “(2) any underlying investment (as defined in  
25       section 492(e)(1)) which, at the time of the sale or

1 other disposition, is part of an investment hedging  
 2 unit (as defined in section 492).”.

3 (6)(A) Section 1221(a)(6) is amended to read  
 4 as follows:

5 “(6) any—

6 “(A) derivative (as defined in section 493),

7 or

8 “(B) any underlying investment (as de-  
 9 fined in section 492(e)(1)) which is part of an  
 10 investment hedging unit (as defined in section  
 11 492),”.

12 (B) Section 1221(b) is amended by striking  
 13 paragraph (1).

14 (7) Section 4975(f)(11)(D) is amended by  
 15 striking clauses (i) and (ii) and inserting the fol-  
 16 lowing:

17 “(i) SECURITY.—The term ‘security’  
 18 means any security described in section  
 19 475(c)(2) (without regard to subparagraph  
 20 (D)(iii) thereof) and any derivative with re-  
 21 spect to such a security (within the mean-  
 22 ing of section 493).

23 “(ii) COMMODITY.—The term ‘com-  
 24 modity’ means any commodity described in  
 25 section 475(e)(2) (without regard to sub-

1 paragraph (B)(iii) thereof) and any deriva-  
 2 tive with respect to such a commodity  
 3 (within the meaning of section 493).”.

4 (8) The table of parts for subchapter E of  
 5 chapter 1 is amended by adding at the end the fol-  
 6 lowing new item:

“PART IV. TAX TREATMENT OF DERIVATIVES AND SIMILAR CONTRACTS”.

7 **SEC. 5. EFFECTIVE DATES.**

8 (a) IN GENERAL.—Except as provided in this Act—

9 (1) the amendments made by section 2 shall  
 10 apply to taxable events occurring after the 90-day  
 11 period beginning with the date of the enactment of  
 12 this Act, in taxable years ending after the last day  
 13 of such period, and

14 (2) the amendments made by sections 3 and 4  
 15 shall apply to derivatives and underlying investments  
 16 held after the last day of such period.

17 (b) IDENTIFICATION REQUIREMENTS.—If, as of the  
 18 close of the 90-day period described in subsection (a)(1),  
 19 a taxpayer simultaneously holds 1 or more derivatives with  
 20 respect to an underlying investment and the underlying  
 21 investment—

22 (1) the taxpayer shall make the identifications  
 23 required under section 492(c)(2) of Internal Rev-  
 24 enue Code of 1986 (as added by section 2 of this  
 25 Act) before the close of such period, and

1           (2) if such identifications result in an invest-  
2           ment hedging unit, the first applicable hedging pe-  
3           riod with respect to such unit shall begin on the day  
4           after the close of such period.

5           (c) DEFINITIONS.—For purposes of this section, any  
6           term used in this section which is also used in part IV  
7           of subchapter E of chapter 1 of such Code (as so added)  
8           shall have the same meaning as when used in such part.

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