

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S.** \_\_\_\_\_

To amend the Internal Revenue Code of 1986 to provide tax relief for persons with investment losses due to fraud or embezzlement.

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IN THE SENATE OF THE UNITED STATES

Mr. SCHUMER (for himself, Mr. KYL, Mr. MENENDEZ, Mr. WICKER, Mr. KERRY, Mr. COCHRAN, Ms. LANDRIEU, Mr. BURR, Mrs. GILLIBRAND, Mr. BOND, Mr. NELSON of Florida, Mr. LEMIEUX, Mrs. LINCOLN, Mr. SPECTER, Mr. LIEBERMAN, and Ms. CANTWELL) introduced the following bill; which was read twice and referred to the Committee on

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**A BILL**

To amend the Internal Revenue Code of 1986 to provide tax relief for persons with investment losses due to fraud or embezzlement.

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 Victim’s  
5 Bill of Rights Act of 2010”.

1 **SEC. 2. TREATMENT OF QUALIFIED FRAUDULENT INVEST-**  
2 **MENT LOSSES IN INDIVIDUAL RETIREMENT**  
3 **ACCOUNTS.**

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

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

11 “(1) IN GENERAL.—In the case of any qualified  
12 fraudulent investment loss in connection with assets  
13 held in an individual retirement plan, the beneficiary  
14 of such plan shall be allowed a deduction with re-  
15 spect to such loss in an amount equal to the lesser  
16 of—

17 “(A) the greater of—

18 “(i) the sum of the amount of con-  
19 tributions to such individual retirement  
20 plan by such beneficiary plus the amount  
21 of contributions to such individual retire-  
22 ment plan by such beneficiary’s employer  
23 on behalf of such beneficiary, or

24 “(ii) 50 percent of the excess of—

25 “(I) the value of the assets held  
26 by such beneficiary in such individual

1 retirement plan, as reported imme-  
2 diately before such loss was discov-  
3 ered, over

4 “(II) the sum of value of the as-  
5 sets held by such beneficiary in such  
6 individual retirement plan imme-  
7 diately after such loss was discovered,  
8 or

9 “(B) \$1,500,000.

10 “(2) QUALIFIED FRAUDULENT INVESTMENT  
11 LOSS.—For purposes of this subsection—

12 “(A) IN GENERAL.—The term ‘qualified  
13 fraudulent investment loss’ means a loss discov-  
14 ered in 2008 or 2009 resulting from a specified  
15 fraudulent arrangement in which, as a result of  
16 the conduct that caused the loss—

17 “(i) a person described in subpara-  
18 graph (B) was charged under State or  
19 Federal law with the commission of fraud,  
20 embezzlement, or similar crime which, if  
21 proven, would constitute a theft (within the  
22 meaning of subsection (c)(3)), or

23 “(ii) a person described in subpara-  
24 graph (B) was the subject of a State or  
25 Federal criminal complaint (not withdrawn

1 or dismissed) alleging the commission of  
2 fraud, embezzlement, or similar crime  
3 which, if proven, would constitute a theft  
4 (within the meaning of subsection (c)(3)),  
5 and either—

6 “(I) the complaint alleged an ad-  
7 mission by such person or the execu-  
8 tion of an affidavit by such person ad-  
9 mitting the crime, or

10 “(II) a receiver or trustee was  
11 appointed with respect to the arrange-  
12 ment or assets of the arrangement  
13 were frozen.

14 “(B) SPECIFIED FRAUDULENT ARRANGE-  
15 MENT.—The term ‘specified fraudulent ar-  
16 rangement’ means an arrangement in which a  
17 person—

18 “(i) receives cash or property from in-  
19 vestors,

20 “(ii) purports to earn income for in-  
21 vestors,

22 “(iii) reports income amounts to the  
23 investors that are partially or wholly ficti-  
24 tious,

1                   “(iv) makes payments, if any, of  
2                   purposed income or principal to some in-  
3                   vestors from amounts that other investors  
4                   invested in the fraudulent arrangement,  
5                   and

6                   “(v) appropriates some or all of the  
7                   investors’ cash or property.

8                   “(3) REGULATIONS.—The Secretary shall issue  
9                   such regulations or other guidance as may be nec-  
10                  essary or appropriate to carry out this subsection,  
11                  including to prevent fraud and abuse under this sub-  
12                  section.”.

13                  (b) DEDUCTION ALLOWED IN CALCULATING NET IN-  
14                  VESTMENT LOSS.—Section 172(d)(4)(C) of the Internal  
15                  Revenue Code of 1986 is amended by inserting “and any  
16                  deduction allowed under section 165(m)” after “section  
17                  165(e)”.

18                  (c) EFFECTIVE DATE.—The amendments made by  
19                  this section shall apply to taxable years beginning after  
20                  December 31, 2007.

21                  **SEC. 3. 6-YEAR NET OPERATING LOSS CARRYBACK.**

22                  (a) EXTENSION OF NET OPERATING LOSS  
23                  CARRYBACK PERIOD.—Paragraph (1) of section 172(b) of  
24                  the Internal Revenue Code of 1986 is amended by adding  
25                  at the end the following new subparagraph:

1                   “(K) QUALIFIED FRAUDULENT INVEST-  
2                   MENT LOSSES.—

3                   “(i) IN GENERAL.—In the case of the  
4                   portion of a net operating loss which is a  
5                   qualified fraudulent investment loss (as de-  
6                   fined in section 165(m)(2)) with respect to  
7                   which the taxpayer has elected the applica-  
8                   tion of this subparagraph—

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

16                  “(II) subparagraphs (F) and (H)  
17                  shall not apply with respect to any  
18                  qualified fraudulent investment loss.

19                  “(ii) APPLICABLE NUMBER OF TAX-  
20                  ABLE YEARS.—For purposes of clause (i),  
21                  the applicable number of taxable years is  
22                  any whole number elected by the taxpayer  
23                  which is more than 2 but not more than  
24                  the lesser of—

1                   “(I) 6 years (7 years in any case  
2                   in which the taxpayer or, in the case  
3                   of a joint return, the taxpayer’s  
4                   spouse has attained the age of 65 be-  
5                   fore the close of the taxable year in  
6                   which the qualified fraudulent invest-  
7                   ment loss was discovered), or

8                   “(II) the period that the taxpayer  
9                   had amounts invested in the scheme  
10                  to which such election applies.

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

1                   “(iv) COORDINATION WITH PARA-  
2                   GRAPH (2).—For purposes of applying  
3                   paragraph (2), a qualified fraudulent in-  
4                   vestment loss (as so defined) for any tax-  
5                   able year shall be treated in a manner  
6                   similar to the manner in which a specified  
7                   liability loss is treated.”.

8                   (b) EFFECTIVE DATE.—

9                   (1) IN GENERAL.—Except as otherwise pro-  
10                  vided in this subsection, the amendments made by  
11                  this section shall apply to net operating losses aris-  
12                  ing in taxable years ending after December 31,  
13                  2007.

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

17                         (A)                 notwithstanding                 section  
18                         172(b)(1)(H)(iii)(II), any election made under  
19                         subsection (b)(1)(H) or 172(b)(3) of section  
20                         172 of such Code with respect to such loss may  
21                         (notwithstanding such section) be revoked be-  
22                         fore the applicable date,

23                         (B)                 any election made under section  
24                         172(b)(1)(K) of such Code with respect to such  
25                         loss shall (notwithstanding such section) be

1 treated as timely made if made before the appli-  
2 cable date, and

3 (C) any application under section 6411(a)  
4 of such Code with respect to such loss shall be  
5 treated as timely filed if filed before the appli-  
6 cable date.

7 For purposes of this paragraph, the term “applica-  
8 ble date” means the date which is 60 days after the  
9 date of the enactment of this Act.

10 **SEC. 4. HARDSHIP WITHDRAWALS.**

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

14 “(H) **DISTRIBUTIONS TO REPLACE QUALI-**  
15 **FIED FRAUDULENT INVESTMENT LOSSES.**—Any  
16 distribution which was made during the 10-year  
17 period beginning on the date on which a quali-  
18 fied fraudulent investment loss (as defined in  
19 section 165(m)(2)) was discovered to the extent  
20 the aggregate of such distributions do not ex-  
21 ceed such qualified fraudulent investment  
22 loss.”.

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

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

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

7 “(C) CATCHUP CONTRIBUTIONS RELATING  
8 TO QUALIFIED FRAUDULENT INVESTMENT  
9 LOSSES.—

10 “(i) IN GENERAL.—In the case of any  
11 applicable individual who elects to make a  
12 qualified retirement contribution in addi-  
13 tion to the amount determined under sub-  
14 paragraph (A), the deductible amount for  
15 any taxable year shall be increased by an  
16 amount equal to the lesser of—

17 “(I) 100 percent of the amount  
18 determined under subparagraph (A)  
19 for such taxable year, or

20 “(II) the excess of the qualified  
21 fraudulent investment loss described  
22 in clause (ii) over the amount of con-  
23 tributions allowed as a deduction by  
24 reason of this subparagraph for all  
25 preceding taxable years.

1                   “(ii) APPLICABLE INDIVIDUAL.—For  
2                   purposes of this subparagraph, the term  
3                   ‘applicable individual’ means, with respect  
4                   to any taxable year, any individual with a  
5                   qualified fraudulent investment loss (as de-  
6                   fined in section 165(m)(2)) in an indi-  
7                   vidual retirement plan in any of the 10 im-  
8                   mediately preceding taxable years if the  
9                   amount of such loss exceeded 50 percent of  
10                  the value of such individual retirement  
11                  plan on the day immediately preceding the  
12                  discovery of the qualified fraudulent invest-  
13                  ment loss.”.

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

17 **SEC. 6. EXTENSION OF LIMITATION FOR CREDITS AND RE-**  
18 **FUNDS FOR GIFTS AND BEQUESTS OF ASSETS**  
19 **WITH QUALIFIED FRAUDULENT INVESTMENT**  
20 **LOSSES.**

21           (a) IN GENERAL.—Section 6511 of the Internal Rev-  
22 enue Code of 1986 is amended by redesignating subsection  
23 (i) as subsection (j) and by inserting after subsection (h)  
24 the following new subsection:

1       “(i) SPECIAL RULES APPLICABLE TO ESTATE AND  
2 GIFT TAXES WITH RESPECT TO ASSETS WITH QUALI-  
3 FIED FRAUDULENT INVESTMENT LOSSES.—

4           “(1) IN GENERAL.—If a claim for a credit or  
5 refund relates to an overpayment of taxes imposed  
6 under subtitle B in connection with a gift or bequest  
7 of an interest in an investment with respect to which  
8 there is a qualified fraudulent investment loss (as  
9 defined in section 165(m)(2)) and the taxpayer did  
10 not know, and reasonably should not have known,  
11 about the criminal behavior in connection with such  
12 loss, such credit or refund may be allowed or made  
13 if claim therefor is filed on or before the date that  
14 is 6 years after the return to which the credit or  
15 overpayment relates was filed.

16           “(2) DETERMINATION OF VALUE.—

17           “(A) GIFT TAXES.—In determining the  
18 amount of any credit or refund described in  
19 paragraph (1) relating to a gift, the value of  
20 such gift shall be not more than the greater of  
21 the value of such gift on the last day of the tax-  
22 able year in which the qualified fraudulent in-  
23 vestment loss was discovered or the amount re-  
24 alized from the disposition of such gift (if any)  
25 by the donee.

1           “(B) ESTATE TAXES.—In determining the  
2           amount of any credit or refund described in  
3           paragraph (1) relating to a bequest, the value  
4           of such bequest shall be not more than the  
5           greater of the value of such bequest on the last  
6           day of the calendar year in which the qualified  
7           fraudulent investment loss was discovered or  
8           the amount realized from the disposition of  
9           such bequest (if any) by the donee.”.

10       (b) EFFECTIVE DATE.—The amendments made by  
11 this section shall apply to gifts or bequests made after De-  
12 cember 31, 2007.