

117TH CONGRESS  
1ST SESSION

# H. R. 5838

To amend the Internal Revenue Code of 1986 to provide for the indexing  
of certain assets for purposes of determining gain or loss.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 3, 2021

Mr. DAVIDSON introduced the following bill; which was referred to the  
Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to provide  
for the indexing of certain assets for purposes of deter-  
mining gain or loss.

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 “Capital Gains Inflation  
5       Relief Act of 2021”.

6       **SEC. 2. INDEXING OF CERTAIN ASSETS FOR PURPOSES OF**  
7       **DETERMINING GAIN OR LOSS.**

8       (a) IN GENERAL.—Part II of subchapter O of chap-  
9       ter 1 of the Internal Revenue Code of 1986 (relating to  
10       basis rules of general application) is amended by redesign-

1 nating section 1023 as section 1024 and by inserting after  
2 section 1022 the following new section:

3 **“SEC. 1023. INDEXING OF CERTAIN ASSETS FOR PURPOSES**  
4 **OF DETERMINING GAIN OR LOSS.**

5 “(a) GENERAL RULE.—

6 “(1) INDEXED BASIS SUBSTITUTED FOR AD-  
7 JUSTED BASIS.—Solely for purposes of determining  
8 gain or loss on the sale or other disposition by a tax-  
9 payer (other than a corporation) of an indexed asset  
10 which has been held for more than 3 years, the in-  
11 dexed basis of the asset shall be substituted for its  
12 adjusted basis.

13 “(2) EXCEPTION FOR DEPRECIATION, ETC.—  
14 The deductions for depreciation, depletion, and am-  
15 ortization shall be determined without regard to the  
16 application of paragraph (1) to the taxpayer or any  
17 other person.

18 “(3) WRITTEN DOCUMENTATION REQUIRE-  
19 MENT.—Paragraph (1) shall apply only with respect  
20 to indexed assets for which the taxpayer has written  
21 documentation of the original purchase price paid or  
22 incurred by the taxpayer to acquire such asset.

23 “(b) INDEXED ASSET.—

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

1           “(A) any common stock in a C corporation  
2           (other than a foreign corporation),

3           “(B) any digital asset, or

4           “(C) any tangible property,

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

7           “(2) STOCK IN CERTAIN FOREIGN CORPORA-  
8           TIONS INCLUDED.—For purposes of this section—

9           “(A) IN GENERAL.—The term ‘indexed  
10           asset’ includes common stock in a foreign cor-  
11           poration which is regularly traded on an estab-  
12           lished securities market.

13           “(B) EXCEPTION.—Subparagraph (A)  
14           shall not apply to—

15           “(i) stock of a foreign investment  
16           company,

17           “(ii) stock in a passive foreign invest-  
18           ment company (as defined in section  
19           1296),

20           “(iii) stock in a foreign corporation  
21           held by a United States person who meets  
22           the requirements of section 1248(a)(2),  
23           and

24           “(iv) stock in a foreign personal hold-  
25           ing company.

1           “(C) TREATMENT OF AMERICAN DEPOSI-  
 2           TORY RECEIPTS.—An American depository re-  
 3           ceipt for common stock in a foreign corporation  
 4           shall be treated as common stock in such cor-  
 5           poration.

6           “(3) DIGITAL ASSET.—For purposes of this sec-  
 7           tion, the term ‘digital asset’ means any natively elec-  
 8           tronic asset which—

9                   “(A) is recorded on a cryptographically se-  
 10           cured distributed ledger, and

11                   “(B) is designed to confer only economic  
 12           or access rights.

13           “(c) INDEXED BASIS.—For purposes of this sec-  
 14           tion—

15                   “(1) GENERAL RULE.—The indexed basis for  
 16           any asset is—

17                   “(A) the adjusted basis of the asset, in-  
 18           creased by

19                   “(B) the applicable inflation adjustment.

20           “(2) APPLICABLE INFLATION ADJUSTMENT.—  
 21           The applicable inflation adjustment for any asset is  
 22           an amount equal to—

23                   “(A) the adjusted basis of the asset, multi-  
 24           plied by

25                   “(B) the percentage (if any) by which—

1                   “(i) the gross domestic product  
2                   deflator for the last calendar quarter end-  
3                   ing before the asset is disposed of, exceeds

4                   “(ii) the gross domestic product  
5                   deflator for the last calendar quarter end-  
6                   ing before the asset was acquired by the  
7                   taxpayer.

8           The percentage under subparagraph (B) shall be  
9           rounded to the nearest  $\frac{1}{10}$  of 1 percentage point.

10           “(3) GROSS DOMESTIC PRODUCT DEFLATOR.—

11           The gross domestic product deflator for any cal-  
12           endar quarter is the implicit price deflator for the  
13           gross domestic product for such quarter (as shown  
14           in the last revision thereof released by the Secretary  
15           of Commerce before the close of the following cal-  
16           endar quarter).

17           “(d) SUSPENSION OF HOLDING PERIOD WHERE DI-  
18           MINISHED RISK OF LOSS; TREATMENT OF SHORT  
19           SALES.—

20           “(1) IN GENERAL.—If the taxpayer (or a re-  
21           lated person) enters into any transaction which sub-  
22           stantially reduces the risk of loss from holding any  
23           asset, such asset shall not be treated as an indexed  
24           asset for the period of such reduced risk.

25           “(2) SHORT SALES.—

1           “(A) IN GENERAL.—In the case of a short  
2           sale of an indexed asset with a short sale period  
3           in excess of 3 years, for purposes of this title,  
4           the amount realized shall be an amount equal  
5           to the amount realized (determined without re-  
6           gard to this paragraph) increased by the appli-  
7           cable inflation adjustment. In applying sub-  
8           section (c)(2) for purposes of the preceding sen-  
9           tence, the date on which the property is sold  
10          short shall be treated as the date of acquisition  
11          and the closing date for the sale shall be treat-  
12          ed as the date of disposition.

13           “(B) SHORT SALE PERIOD.—For purposes  
14          of subparagraph (A), the short sale period be-  
15          gins on the day that the property is sold and  
16          ends on the closing date for the sale.

17          “(e) TREATMENT OF REGULATED INVESTMENT  
18 COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—

19           “(1) ADJUSTMENTS AT ENTITY LEVEL.—

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

1                   “(B) EXCEPTION FOR CORPORATE SHARE-  
2                   HOLDERS.—Under regulations—

3                   “(i) in the case of a distribution by a  
4                   qualified investment entity (directly or in-  
5                   directly) to a corporation—

6                   “(I) the determination of whether  
7                   such distribution is a dividend shall be  
8                   made without regard to this section,  
9                   and

10                  “(II) the amount treated as gain  
11                  by reason of the receipt of any capital  
12                  gain dividend shall be increased by the  
13                  percentage by which the entity’s net  
14                  capital gain for the taxable year (de-  
15                  termined without regard to this sec-  
16                  tion) exceeds the entity’s net capital  
17                  gain for such year determined with re-  
18                  gard to this section, and

19                  “(ii) there shall be other appropriate  
20                  adjustments (including deemed distribu-  
21                  tions) so as to ensure that the benefits of  
22                  this section are not allowed (directly or in-  
23                  directly) to corporate shareholders of quali-  
24                  fied investment entities.

1 For purposes of the preceding sentence, any  
2 amount includible in gross income under section  
3 852(b)(3)(D) shall be treated as a capital gain  
4 dividend and an S corporation shall not be  
5 treated as a corporation.

6 “(C) EXCEPTION FOR QUALIFICATION  
7 PURPOSES.—This section shall not apply for  
8 purposes of sections 851(b) and 856(e).

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

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



1 amount subject to tax under section  
 2 852(b)(3)(A) as is designated by the com-  
 3 pany under section 852(b)(3)(D).

4 “(ii) OTHER TAXES.—This section  
 5 shall not apply for purposes of determining  
 6 the amount of any tax imposed by para-  
 7 graph (4), (5), or (6) of section 857(b).

8 “(2) ADJUSTMENTS TO INTERESTS HELD IN  
 9 ENTITY.—

10 “(A) REGULATED INVESTMENT COMPA-  
 11 NIES.—Stock in a regulated investment com-  
 12 pany (within the meaning of section 851) shall  
 13 be an indexed asset for any calendar quarter in  
 14 the same ratio as—

15 “(i) the average of the fair market  
 16 values of the indexed assets held by such  
 17 company at the close of each month during  
 18 such quarter, bears to

19 “(ii) the average of the fair market  
 20 values of all assets held by such company  
 21 at the close of each such month.

22 “(B) REAL ESTATE INVESTMENT  
 23 TRUSTS.—Stock in a real estate investment  
 24 trust (within the meaning of section 856) shall

1 be an indexed asset for any calendar quarter in  
2 the same ratio as—

3 “(i) the fair market value of the in-  
4 dexed assets held by such trust at the close  
5 of such quarter, bears to

6 “(ii) the fair market value of all as-  
7 sets held by such trust at the close of such  
8 quarter.

9 “(C) RATIO OF 80 PERCENT OR MORE.—If  
10 the ratio for any calendar quarter determined  
11 under subparagraph (A) or (B) would (but for  
12 this subparagraph) be 80 percent or more, such  
13 ratio for such quarter shall be 100 percent.

14 “(D) RATIO OF 20 PERCENT OR LESS.—If  
15 the ratio for any calendar quarter determined  
16 under subparagraph (A) or (B) would (but for  
17 this subparagraph) be 20 percent or less, such  
18 ratio for such quarter shall be zero.

19 “(E) LOOK-THRU OF PARTNERSHIPS.—For  
20 purposes of this paragraph, a qualified invest-  
21 ment entity which holds a partnership interest  
22 shall be treated (in lieu of holding a partnership  
23 interest) as holding its proportionate share of  
24 the assets held by the partnership.

1           “(3) TREATMENT OF RETURN OF CAPITAL DIS-  
2       TRIBUTIONS.—Except as otherwise provided by the  
3       Secretary, a distribution with respect to stock in a  
4       qualified investment entity which is not a dividend  
5       and which results in a reduction in the adjusted  
6       basis of such stock shall be treated as allocable to  
7       stock acquired by the taxpayer in the order in which  
8       such stock was acquired.

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

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

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

16      “(f) OTHER PASS-THRU ENTITIES.—

17               “(1) PARTNERSHIPS.—

18                       “(A) IN GENERAL.—In the case of a part-  
19                       nership, the adjustment made under subsection  
20                       (a) at the partnership level shall be passed  
21                       through to the partners.

22                       “(B) SPECIAL RULE IN THE CASE OF SEC-  
23                       TION 754 ELECTIONS.—In the case of a transfer  
24                       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.

23                  “(4) INDEXING ADJUSTMENT DISREGARDED IN  
24                  DETERMINING LOSS ON SALE OF INTEREST IN ENTI-  
25                  TY.—Notwithstanding the preceding provisions of

1       this subsection, for purposes of determining the  
2       amount of any loss on a sale or exchange of an in-  
3       terest in a partnership, S corporation, or common  
4       trust fund, the adjustment made under subsection  
5       (a) shall not be taken into account in determining  
6       the adjusted basis of such interest.

7       “(g) DISPOSITIONS BETWEEN RELATED PERSONS.—

8               “(1) IN GENERAL.—This section shall not apply  
9       to any sale or other disposition of property between  
10      related persons except to the extent that the basis  
11      of such property in the hands of the transferee is a  
12      substituted basis.

13             “(2) RELATED PERSONS DEFINED.—For pur-  
14      poses of this section, the term ‘related persons’  
15      means—

16               “(A) persons bearing a relationship set  
17      forth in section 267(b), and

18               “(B) persons treated as single employer  
19      under subsection (b) or (c) of section 414.

20       “(h) TRANSFERS TO INCREASE INDEXING ADJUST-  
21      MENT.—If any person transfers cash, debt, or any other  
22      property to another person and the principal purpose of  
23      such transfer is to secure or increase an adjustment under  
24      subsection (a), the Secretary may disallow part or all of  
25      such adjustment or increase.

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

2 “(1) TREATMENT OF IMPROVEMENTS, ETC.—If  
3 there is an addition to the adjusted basis of any tan-  
4 gible property or of any stock in a corporation dur-  
5 ing the taxable year by reason of an improvement to  
6 such property or a contribution to capital of such  
7 corporation—

8 “(A) such addition shall never be taken  
9 into account under subsection (c)(1)(A) if the  
10 aggregate amount thereof during the taxable  
11 year with respect to such property or stock is  
12 less than \$1,000, and

13 “(B) such addition shall be treated as a  
14 separate asset acquired at the close of such tax-  
15 able year if the aggregate amount thereof dur-  
16 ing the taxable year with respect to such prop-  
17 erty or stock is \$1,000 or more.

18 A rule similar to the rule of the preceding sentence  
19 shall apply to any other portion of an asset to the  
20 extent that separate treatment of such portion is ap-  
21 propriate to carry out the purposes of this section.

22 “(2) ASSETS WHICH ARE NOT INDEXED ASSETS  
23 THROUGHOUT HOLDING PERIOD.—The applicable in-  
24 flation adjustment shall be appropriately reduced for

1 periods during which the asset was not an indexed  
2 asset.

3 “(3) TREATMENT OF CERTAIN DISTRIBUTIONS.—A distribution with respect to stock in a  
4 corporation which is not a dividend shall be treated  
5 as a disposition.  
6

7 “(4) SECTION CANNOT INCREASE ORDINARY  
8 LOSS.—To the extent that (but for this paragraph)  
9 this section would create or increase a net ordinary  
10 loss to which section 1231(a)(2) applies or an ordi-  
11 nary loss to which any other provision of this title  
12 applies, such provision shall not apply. The taxpayer  
13 shall be treated as having a long-term capital loss in  
14 an amount equal to the amount of the ordinary loss  
15 to which the preceding sentence applies.

16 “(5) ACQUISITION DATE WHERE THERE HAS  
17 BEEN PRIOR APPLICATION OF SUBSECTION (a)(1)  
18 WITH RESPECT TO THE TAXPAYER.—If there has  
19 been a prior application of subsection (a)(1) to an  
20 asset while such asset was held by the taxpayer, the  
21 date of acquisition of such asset by the taxpayer  
22 shall be treated as not earlier than the date of the  
23 most recent such prior application.

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

4       (b) CLERICAL AMENDMENT.—The table of sections  
5 for part II of subchapter O of chapter 1 of the Internal  
6 Revenue Code of 1986 is amended by striking the item  
7 relating to section 1023 and by inserting after the item  
8 relating to section 1022 the following new item:

“Sec. 1023. Indexing of certain assets for purposes of determining gain or loss.  
“Sec. 1024. Cross references.”.

9       (c) EFFECTIVE DATE.—The amendments made by  
10 this section shall apply to indexed assets acquired by the  
11 taxpayer after December 31, 2021, in taxable years ending  
12 after such date.

○