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S. 3120

To impose restrictions on the ability of officers and employees of the United States to enter into contracts with corporations or partnerships that move outside the United States while retaining substantially the same ownership.

IN THE SENATE OF THE UNITED STATES

OCTOBER 16, 2002

Mr. GRASSLEY (for himself, Mr. BAUCUS, and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To impose restrictions on the ability of officers and employees of the United States to enter into contracts with corporations or partnerships that move outside the United States while retaining substantially the same ownership.

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 “Reclaiming Expatri-
5 ated Contracts and Profits Act”.

1 **SEC. 2. RESTRICTIONS ON FEDERAL CONTRACTS WITH**
2 **CERTAIN INVERTED ENTITIES.**

3 (a) RESTRICTIONS.—

4 (1) BAN ON CERTAIN INVERTED ENTITIES.—

5 Notwithstanding any other provision of law—

6 (A) no officer or employee of the United
7 States may enter into, extend, or modify a con-
8 tract with a foreign incorporated entity treated
9 as an inverted domestic corporation under sub-
10 section (c) during the restriction period for the
11 entity, and

12 (B) any officer or employee of the United
13 States entering into a contract after the date of
14 the enactment of this Act shall include in the
15 contract a prohibition on the subcontracting of
16 any portion of the contract to any foreign incor-
17 porated entity treated as an inverted domestic
18 corporation under subsection (c) during the re-
19 striction period for the entity.

20 (2) MANDATORY REDUCTION IN CONTRACT
21 EVALUATION OF CERTAIN ENTITIES.—

22 (A) IN GENERAL.—If, during the restric-
23 tion period for an acquired entity to which this
24 section applies, the entity makes an offer in re-
25 sponse to a solicitation of offers for a contract
26 with the United States, any officer or employee

1 of the United States evaluating the offer shall,
2 solely for purposes of awarding the contract,
3 adjust the evaluation as follows:

4 (i) In the case of a contract to be en-
5 tered into with an offeror selected solely on
6 the basis of price, the price offered by such
7 acquired entity shall be deemed to be equal
8 to 110 percent of the price actually of-
9 fered.

10 (ii) In the case of a contract to be en-
11 tered into with an offeror on the basis of
12 two or more evaluation factors, the quan-
13 titative evaluation of the offer made by
14 such acquired entity shall be deemed to be
15 reduced by 10 percent.

16 (B) APPLICATION TO CERTAIN CONTRAC-
17 TORS.—If a person other than an entity to
18 which this paragraph applies makes an offer for
19 a contract with the United States, and it is rea-
20 sonable to assume at the time of the offer that
21 any portion of the work will be subcontracted to
22 such an entity, subparagraph (A) shall be ap-
23 plied to such offer in the same manner as if the
24 person making the offer were such an entity.

1 (3) APPLICATION TO RELATED ENTITIES.—

2 Paragraphs (1) and (2) shall also apply during the
3 restriction period for an entity to—

4 (A) a member of an expanded affiliated
5 group which includes the entity, and

6 (B) any other related person with respect
7 to the entity.

8 (b) EXCEPTIONS.—

9 (1) PRESIDENTIAL WAIVER.—The President of
10 the United States may waive the application of sub-
11 section (a) with respect to any contract if the Presi-
12 dent determines that the waiver is necessary in the
13 interest of national security.

14 (2) EXCEPTION WHERE NO TAX AVOIDANCE
15 PURPOSE.—

16 (A) IN GENERAL.—This section shall not
17 apply to a foreign incorporated entity or an ac-
18 quired entity if the entity requests, and the Sec-
19 retary of the Treasury issues, a determination
20 letter that the acquisition described in sub-
21 section (c)(1)(A) with respect to the entity did
22 not have as one of its principal purposes the
23 avoidance of Federal income taxation.

1 (B) PROCEDURES.—The Secretary of the
2 Treasury shall prescribe the time and manner
3 of filing a request under this paragraph.

4 (C) STAY OF RESTRICTION PERIOD.—

5 (i) IN GENERAL.—The restriction pe-
6 riod with respect to an entity filing a re-
7 quest under this paragraph shall not begin
8 until the Secretary of the Treasury notifies
9 the entity that it will not issue a deter-
10 mination letter with respect to the request.

11 (ii) NO ACTION.—If the Secretary
12 takes no action with respect to a request
13 during the 1-year period beginning on the
14 date of the request (or such longer period
15 as the Secretary and the entity may agree
16 upon), the Secretary shall be treated as
17 having issued a determination letter de-
18 scribed in subparagraph (A). This clause
19 shall not apply to a request if the entity
20 does not submit the request in proper form
21 or the entity does not provide the informa-
22 tion the Secretary requests to process the
23 request.

24 (c) INVERTED DOMESTIC CORPORATION.—For pur-
25 poses of this section—

1 (1) IN GENERAL.—A foreign incorporated enti-
2 ty shall be treated as an inverted domestic corpora-
3 tion if, pursuant to a plan (or a series of related
4 transactions)—

5 (A) the entity completes after the date of
6 the enactment of this Act the direct or indirect
7 acquisition of substantially all of the properties
8 held directly or indirectly by a domestic cor-
9 poration or substantially all of the properties
10 constituting a trade or business of a domestic
11 partnership,

12 (B) after the acquisition at least 80 per-
13 cent of the stock (by vote or value) of the entity
14 is held—

15 (i) in the case of an acquisition with
16 respect to a domestic corporation, by
17 former shareholders of the domestic cor-
18 poration by reason of holding stock in the
19 domestic corporation, or

20 (ii) in the case of an acquisition with
21 respect to a domestic partnership, by
22 former partners of the domestic partner-
23 ship by reason of holding a capital or prof-
24 its interest in the domestic partnership,
25 and

1 (C) the expanded affiliated group which
2 after the acquisition includes the entity does
3 not have substantial business activities in the
4 foreign country in which or under the law of
5 which the entity is created or organized when
6 compared to the total business activities of such
7 expanded affiliated group.

8 (2) RULES FOR APPLICATION OF SUB-
9 SECTION.—In applying this subsection, the following
10 rules shall apply:

11 (A) CERTAIN STOCK DISREGARDED.—

12 There shall not be taken into account in deter-
13 mining ownership for purposes of paragraph
14 (1)(B)—

15 (i) stock held by members of the ex-
16 panded affiliated group which includes the
17 foreign incorporated entity, or

18 (ii) stock of such entity which is sold
19 in a public offering related to the acqui-
20 sition described in paragraph (1)(A).

21 (B) PLAN DEEMED IN CERTAIN CASES.—If
22 a foreign incorporated entity acquires directly
23 or indirectly substantially all of the properties
24 of a domestic corporation or partnership during
25 the 4-year period beginning on the date which

1 is 2 years before the ownership requirements of
2 paragraph (1)(B) are met with respect to such
3 corporation or partnership, such actions shall
4 be treated as pursuant to a plan.

5 (C) CERTAIN TRANSFERS DISREGARDED.—

6 The transfer of properties or liabilities (includ-
7 ing by contribution or distribution) shall be dis-
8 regarded if such transfers are part of a plan a
9 principal purpose of which is to avoid the pur-
10 poses of this section.

11 (D) SPECIAL RULE FOR RELATED PART-

12 NERSHIPS.—For purposes of applying this sub-
13 section to the acquisition of a domestic partner-
14 ship, except as provided in regulations, all part-
15 nerships which are under common control
16 (within the meaning of section 482 of the Inter-
17 nal Revenue Code of 1986) shall be treated as
18 1 partnership.

19 (E) TREATMENT OF CERTAIN RIGHTS.—

20 The Secretary of the Treasury shall prescribe
21 such regulations as may be necessary—

22 (i) to treat warrants, options, con-
23 tracts to acquire stock, convertible debt in-
24 struments, and other similar interests as
25 stock, and

1 (ii) to treat stock as not stock.

2 (d) ACQUIRED ENTITY TO WHICH SECTION AP-
3 PLIES.—

4 (1) IN GENERAL.—This section shall apply to
5 an acquired entity if a foreign incorporated entity
6 would be treated as an inverted domestic corporation
7 with respect to the acquired entity if subsection
8 (c)(1)(B) were applied by substituting “50 percent”
9 for “80 percent”.

10 (2) APPLICATION TO CERTAIN ACQUISITIONS
11 BEFORE ENACTMENT.—This section shall apply to
12 an acquired entity if a foreign incorporated entity
13 would be treated as an inverted domestic corporation
14 if subsection (c)(1) were applied—

15 (A) by substituting “after December 31,
16 1996, and on or before the date of the enact-
17 ment of this Act,” for “after the date of the en-
18 actment of this Act” in subparagraph (A), and

19 (B) by substituting “50 percent” for “80
20 percent” in subparagraph (B).

21 (3) ACQUIRED ENTITY.—For purposes of this
22 section—

23 (A) IN GENERAL.—The term ‘acquired en-
24 tity’ means the domestic corporation or partner-
25 ship substantially all of the properties of which

1 are directly or indirectly acquired in an acquisi-
2 tion described in subsection (c)(1)(A) to which
3 this subsection applies.

4 (B) AGGREGATION RULES.—Any domestic
5 person bearing a relationship described in sec-
6 tion 267(b) or 707(b) of the Internal Revenue
7 Code of 1986 to an acquired entity shall be
8 treated as an acquired entity with respect to the
9 acquisition described in subparagraph (A).

10 (e) DEFINITIONS.—For purposes of this section—

11 (1) EXPANDED AFFILIATED GROUP.—The term
12 “expanded affiliated group” means an affiliated
13 group as defined in section 1504(a) of the Internal
14 Revenue Code of 1986 (without regard to section
15 1504(b)(3) of such Code), except that section
16 1504(a) of such Code shall be applied by sub-
17 stituting “more than 50 percent” for “at least 80
18 percent” each place it appears.

19 (2) FOREIGN INCORPORATED ENTITY.—The
20 term “foreign incorporated entity” means any entity
21 which is treated as a foreign corporation for pur-
22 poses of such Code.

23 (3) RELATED PERSON.—The term “related per-
24 son” means, with respect to any entity, a person
25 which—

1 (A) bears a relationship to such entity de-
2 scribed in section 267(b) or 707(b) of such
3 Code, or

4 (B) is under the same common control
5 (within the meaning of section 482 of such
6 Code) as such entity.

7 (4) RESTRICTION PERIOD.—

8 (A) IN GENERAL.—The term “restriction
9 period” means, with respect to any entity, the
10 period—

11 (i) beginning on the date substantially
12 all of the properties to be acquired as part
13 of the acquisition described in subsection
14 (c)(1)(A) are acquired, and

15 (ii) to the extent provided by the Sec-
16 retary of the Treasury, ending on the date
17 the income and gain from such properties
18 is subject to United States taxation in the
19 same manner as if such properties were
20 held by a United States person.

21 (B) SPECIAL RULES FOR ACQUIRED ENTI-
22 TIES.—

23 (i) 10-YEAR LIMIT.—In the case of an
24 acquired entity to which subsection (a)(2)
25 applies, the restriction period shall end no

1 later than the date which is 10 years from
2 the date described in subparagraph (A)(i)
3 (or, if later, the date of the enactment of
4 this Act).

5 (ii) SUBSEQUENT ACQUISITIONS BY
6 UNRELATED DOMESTIC CORPORATIONS.—

7 (I) IN GENERAL.—Subject to
8 such conditions, limitations, and ex-
9 ceptions as the Secretary of the
10 Treasury may prescribe, if, after an
11 acquisition described in subsection
12 (c)(1)(A) to which subsection (a)(2)
13 applies, a domestic corporation the
14 stock of which is traded on an estab-
15 lished securities market acquires di-
16 rectly or indirectly any properties of
17 one or more acquired entities, then
18 the restriction period for any such ac-
19 quired entity with respect to which
20 the requirements of clause (ii) are met
21 shall end immediately after such ac-
22 quisition.

23 (II) REQUIREMENTS.—The re-
24 quirements of this subclause are met
25 with respect to a transaction involving

1 any acquisition described in subclause
2 (I) if—

3 (aa) before such transaction
4 the domestic corporation did not
5 have a relationship described in
6 section 267(b) or 707(b) of such
7 Code, and was not under com-
8 mon control (within the meaning
9 of section 482 of such Code),
10 with the acquired entity, or any
11 member of an expanded affiliated
12 group including such entity, and

13 (bb) after such transaction,
14 such acquired entity is a member
15 of the same expanded affiliated
16 group which includes the domes-
17 tic corporation or has such a re-
18 lationship or is under such com-
19 mon control with any member of
20 such group, and is not a member
21 of, and does not have such a rela-
22 tionship and is not under such
23 common control with any mem-
24 ber of, the expanded affiliated

1 group which before such acquisi-
2 tion included such entity.

3 (5) OTHER DEFINITIONS.—The terms “per-
4 son”, “domestic”, and “foreign” have the same
5 meanings given such terms by section 7701(a) of
6 such Code.

7 (f) ASSISTANCE.—The Secretary of the Treasury or
8 his delegate shall assist officers and employees of the
9 United States in carrying out the provisions of this sec-
10 tion, including providing assistance in identifying entities
11 to which this section applies.

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