

112TH CONGRESS
1ST SESSION

H. R. 3338

To amend the Internal Revenue Code of 1986 to provide for the identification of corporate tax haven countries and increased penalties for tax evasion practices in haven countries that ship United States jobs overseas, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 3, 2011

Mr. MCNERNEY (for himself, Mr. BISHOP of New York, and Mr. PETERS) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Internal Revenue Code of 1986 to provide for the identification of corporate tax haven countries and increased penalties for tax evasion practices in haven countries that ship United States jobs overseas, 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 This Act may be cited as the “Stop Outsourcing and
5 Create American Jobs Act of 2011”.

1 **SEC. 2. IDENTIFYING CORPORATE TAX HAVEN COUNTRIES**
2 **AND INCREASING PENALTIES FOR TAX EVA-**
3 **SION PRACTICES IN HAVEN COUNTRIES THAT**
4 **SHIP UNITED STATES JOBS OVERSEAS.**

5 Not later than one year after the date of the enact-
6 ment of this Act, the Secretary of the Treasury shall de-
7 velop and publish a list of countries the Secretary deter-
8 mines to be corporate tax haven countries. In developing
9 such list, the Secretary may consider the following criteria:

- 10 (1) Tax rate in the country.
- 11 (2) Lack of effective exchange of information
12 between governments.
- 13 (3) Lack of transparency in financial services
14 sector.
- 15 (4) Lack of requirements of substantial eco-
16 nomic activity.
- 17 (5) Incentives which may encourage a United
18 States corporation to invest abroad rather than do-
19 mestically.
- 20 (6) Other factors deemed relevant by the Sec-
21 retary.

22 The Secretary shall review and update such list every 3
23 years.

1 **SEC. 3. INCREASE IN PENALTIES FOR CORPORATE TAX**
2 **EVASION PRACTICES CONCERNING RETURNS,**
3 **DOCUMENTS, AND ACTIVITIES RELATING TO**
4 **TAX HAVEN COUNTRIES.**

5 (a) ACCURACY-RELATED PENALTY ON UNDERPAY-
6 MENTS.—Section 6662 of the Internal Revenue Code of
7 1986 is amended by adding at the end the following:

8 “(k) INCREASE IN PENALTY IN CASE OF TAX HAVEN
9 COUNTRIES.—

10 “(1) IN GENERAL.—In the case of any portion
11 of an underpayment by a corporation for a taxable
12 year which involves an undisclosed foreign financial
13 asset located in a tax haven country at any time
14 during such taxable year, subsection (a) shall be ap-
15 plied with respect to such portion by substituting ‘60
16 percent’ for ‘20 percent’.

17 “(2) TAX HAVEN COUNTRY.—For purposes of
18 this subsection, the term ‘tax haven country’ means
19 a country on the list published under section 2(a) of
20 the Stop Outsourcing and Create American Jobs Act
21 of 2011.”.

22 (b) UNDERSTATEMENTS WITH RESPECT TO RE-
23 PORTABLE TRANSACTIONS.—Section 6662A of the Inter-
24 nal Revenue Code of 1986 is amended by adding at the
25 end the following:

1 “(f) INCREASE IN PENALTY IN CASE OF TAX HAVEN
2 COUNTRIES.—In the case of any portion of a reportable
3 transaction understatement by a corporation for a taxable
4 year which involves a transaction that originates, termi-
5 nates, or otherwise occurs in a tax haven country (as de-
6 fined in section 6662(k)(2)), subsection (a) shall be ap-
7 plied with respect to such portion by substituting ‘40 per-
8 cent’ for ‘20 percent’.”.

9 (c) FRAUD PENALTY.—Section 6663 of the Internal
10 Revenue Code of 1986 is amended by adding at the end
11 the following:

12 “(d) INCREASE IN PENALTY IN CASE OF TAX HAVEN
13 COUNTRIES.—In the case of any fraud by a corporation
14 involving an activity occurring in a tax haven country (as
15 defined in section 6662(k)(2)), subsection (a) shall be ap-
16 plied by substituting ‘100 percent’ for ‘75 percent’.”.

17 (d) ERRONEOUS CLAIM FOR CREDIT OR REFUND.—
18 Section 6676 of the Internal Revenue Code of 1986 is
19 amended by redesignating subsection (d) as subsection (e)
20 and by inserting after subsection (e) the following new
21 subsection:

22 “(d) INCREASE IN PENALTY IN CASE OF TAX HAVEN
23 COUNTRIES.—In the case of claim or credit by a corpora-
24 tion for any excessive amount due for credits or refunds
25 involving funds held or invested in a tax haven country

1 (as defined in section 6662(k)(2)), subsection (a) shall be
2 applied by substituting ‘40 percent’ for ‘20 percent’.”

3 (e) WILLFUL ATTEMPT TO EVADE OR DEFEAT
4 TAX.—Section 7201 of the Internal Revenue Code of 1986
5 is amended by adding at the end the following new sen-
6 tence: “In the case of an attempt by a corporation which
7 involves a tax haven country (as defined in section
8 6662(k)(2)), the preceding sentence shall be applied by
9 substituting ‘\$1,000,000’ for ‘\$500,000’ ”.

10 (f) FRAUD AND FALSE STATEMENTS.—Section 7206
11 of the Internal Revenue Code of 1986 is amended by add-
12 ing at the end the following new sentence: “In the case
13 of an offense by a corporation described in the preceding
14 sentence which involves a tax haven country (as defined
15 in section 6662(k)(2)), the preceding sentence shall be ap-
16 plied by substituting ‘\$1,000,000’ for ‘\$500,000’ ”.

17 (g) FRAUDULENT RETURNS, STATEMENTS, OR
18 OTHER DOCUMENTS.—Section 7207 of the Internal Rev-
19 enue Code of 1986 is amended by adding at the end the
20 following new sentence: “In the case of an offense by a
21 corporation described in either of the two preceding sen-
22 tences which involves a tax haven country (as defined in
23 section 6662(k)(2)), the appropriate sentence shall be ap-
24 plied by substituting ‘\$150,000’ for ‘\$50,000’ ”.

25 (h) EFFECTIVE DATE.—

1 (1) The amendments made by subsections (a)
2 and (b) shall apply to underpayments attributable to
3 transactions entered into after the date on which the
4 list developed under section 2 is first published.

5 (2) The amendment made by subsection (c)
6 shall apply to returns the due date for which (deter-
7 mined without regard to extensions) is after the date
8 on which the list developed under section 2 is first
9 published.

10 (3) The amendment made by subsection (d)
11 shall apply to refunds and credits attributable to
12 transactions entered into after the date on which the
13 list developed under section 2 is first published.

14 (4) The amendment made by subsection (e), (f),
15 and (g) shall apply to offenses committed after the
16 date on which the list developed under section 2 is
17 first published.

18 **SEC. 4. PREFERENCES IN GOVERNMENT CONTRACTS.**

19 (a) PREFERENCE.—A Federal department or agency
20 may give a preference in the award of a contract for the
21 procurement of goods or services in a fiscal year to any
22 potential contractor that has not engaged in outsourcing
23 during the fiscal year preceding the fiscal year in which
24 the contract is awarded.

1 (b) REQUIREMENT TO REQUEST OUTSOURCING IN-
2 FORMATION FROM POTENTIAL CONTRACTORS.—

3 (1) IN GENERAL.—In any solicitation for offers
4 for a contract issued by a Federal department or
5 agency in a fiscal year, the department or agency
6 shall request each offeror for the contract to provide
7 information regarding whether the offeror engaged
8 in outsourcing during the fiscal year preceding the
9 fiscal year in which the contract is to be awarded.

10 (2) PENALTY AND DEBARMENT.—Any offeror
11 found to be in violation of paragraph (1), including
12 making a false statement regarding the offeror's en-
13 gagement in outsourcing—

14 (A) shall, notwithstanding section 1001 of
15 title 18, United States Code, be liable to the
16 United States for a civil penalty in an amount
17 not more than the value of the contract the of-
18 feror is seeking; and

19 (B) shall be debarred, by the head of the
20 department or agency soliciting the offer, from
21 contracting with the Federal Government for a
22 period of two years starting on the date on
23 which the offeror is found to be in violation of
24 paragraph (1).

1 (3) **EFFECTIVE DATE.**—This subsection shall
2 apply to solicitations for contracts issued on and
3 after the date occurring one year after the date of
4 the enactment of this Act.

5 (c) **OUTSOURCING DEFINED.**—In this section, the
6 term “outsourcing” means the laying off of a United
7 States worker from a job, and the hiring or contracting
8 for the same job to be performed in a foreign country.

9 **SEC. 5. DEFICIT REDUCTION.**

10 Amounts which the Secretary of the Treasury esti-
11 mates are received in the Treasury by reason of this Act
12 are hereby set aside for the reduction of the public debt.

○