

112TH CONGRESS  
1ST SESSION

# S. 1373

To amend the Internal Revenue Code of 1986 to reduce international tax avoidance and restore a level playing field for American businesses.

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IN THE SENATE OF THE UNITED STATES

JULY 14, 2011

Mr. ROCKEFELLER 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 reduce international tax avoidance and restore a level playing field for American businesses.

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 “International Tax  
5 Competitiveness Act of 2011”.

6 **SEC. 2. TREATMENT OF FOREIGN CORPORATIONS MAN-**  
7 **AGED AND CONTROLLED IN THE UNITED**  
8 **STATES AS DOMESTIC CORPORATIONS.**

9 (a) IN GENERAL.—Section 7701 of the Internal Rev-  
10 enue Code of 1986 is amended by redesignating subsection

1 (p) as subsection (q) and by inserting after subsection (o)  
2 the following new subsection:

3 “(p) CERTAIN CORPORATIONS MANAGED AND CON-  
4 TROLLED IN THE UNITED STATES TREATED AS DOMES-  
5 TIC FOR INCOME TAX.—

6 “(1) IN GENERAL.—Notwithstanding subsection  
7 (a)(4), in the case of a corporation described in  
8 paragraph (2) if—

9 “(A) the corporation would not otherwise  
10 be treated as a domestic corporation for pur-  
11 poses of this title, but

12 “(B) the management and control of the  
13 corporation occurs, directly or indirectly, pri-  
14 marily within the United States,

15 then, solely for purposes of chapter 1 (and any other  
16 provision of this title relating to chapter 1), the cor-  
17 poration shall be treated as a domestic corporation.

18 “(2) CORPORATION DESCRIBED.—

19 “(A) IN GENERAL.—A corporation is de-  
20 scribed in this paragraph if—

21 “(i) the stock of such corporation is  
22 regularly traded on an established securi-  
23 ties market, or

24 “(ii) the aggregate gross assets of  
25 such corporation (or any predecessor there-

1 of), including assets under management  
2 for investors, whether held directly or indi-  
3 rectly, at any time during the taxable year  
4 or any preceding taxable year is  
5 \$50,000,000 or more.

6 “(B) GENERAL EXCEPTION.—A corpora-  
7 tion shall not be treated as described in this  
8 paragraph if—

9 “(i) such corporation was treated as a  
10 corporation described in this paragraph in  
11 a preceding taxable year,

12 “(ii) such corporation—

13 “(I) is not regularly traded on an  
14 established securities market, and

15 “(II) has, and is reasonably ex-  
16 pected to continue to have, aggregate  
17 gross assets (including assets under  
18 management for investors, whether  
19 held directly or indirectly) of less than  
20 \$50,000,000, and

21 “(iii) the Secretary grants a waiver to  
22 such corporation under this subparagraph.

23 “(C) EXCEPTION FROM GROSS ASSETS  
24 TEST.—Subparagraph (A)(ii) shall not apply to  
25 a corporation which is a controlled foreign cor-

1           poration (as defined in section 957) and which  
2           is a member of an affiliated group (as defined  
3           section 1504, but determined without regard to  
4           section 1504(b)(3)) the common parent of  
5           which—

6                   “(i) is a domestic corporation (deter-  
7                   mined without regard to this subsection),  
8                   and

9                   “(ii) has substantial assets (other  
10                   than cash and cash equivalents and other  
11                   than stock of foreign subsidiaries) held for  
12                   use in the active conduct of a trade or  
13                   business in the United States.

14           “(3) MANAGEMENT AND CONTROL.—

15                   “(A) IN GENERAL.—The Secretary shall  
16                   prescribe regulations for purposes of deter-  
17                   mining cases in which the management and  
18                   control of a corporation is to be treated as oc-  
19                   curring primarily within the United States.

20                   “(B) EXECUTIVE OFFICERS AND SENIOR  
21                   MANAGEMENT.—Such regulations shall provide  
22                   that—

23                   “(i) the management and control of a  
24                   corporation shall be treated as occurring  
25                   primarily within the United States if sub-

1           stantially all of the executive officers and  
2           senior management of the corporation who  
3           exercise day-to-day responsibility for mak-  
4           ing decisions involving strategic, financial,  
5           and operational policies of the corporation  
6           are located primarily within the United  
7           States, and

8           “(ii) individuals who are not executive  
9           officers and senior management of the cor-  
10          poration (including individuals who are of-  
11          ficers or employees of other corporations in  
12          the same chain of corporations as the cor-  
13          poration) shall be treated as executive offi-  
14          cers and senior management if such indi-  
15          viduals exercise the day-to-day responsibil-  
16          ities of the corporation described in clause  
17          (i).

18          “(C) CORPORATIONS PRIMARILY HOLDING  
19          INVESTMENT ASSETS.—Such regulations shall  
20          also provide that the management and control  
21          of a corporation shall be treated as occurring  
22          primarily within the United States if—

23                 “(i) the assets of such corporation (di-  
24                 rectly or indirectly) consist primarily of as

1 sets being managed on behalf of investors,  
2 and  
3 “(ii) decisions about how to invest the  
4 assets are made in the United States.”.

5 (b) **EFFECTIVE DATE.**—The amendments made by  
6 this section shall apply to taxable years beginning on or  
7 after the date which is 2 years after the date of the enact-  
8 ment of this Act.

9 **SEC. 3. CURRENT TAXATION OF ROYALTIES AND OTHER IN-**  
10 **COME FROM INTANGIBLES RECEIVED FROM**  
11 **A CONTROLLED FOREIGN CORPORATION.**

12 (a) **REPEAL OF LOOK-THRU RULE FOR ROYALTIES**  
13 **RECEIVED FROM CONTROLLED FOREIGN CORPORA-**  
14 **TIONS.**—Paragraph (6) of section 954(c) of the Internal  
15 Revenue Code of 1986 is amended—

16 (1) by striking “rents, and royalties” in sub-  
17 paragraph (A) and inserting “and rents”, and

18 (2) by striking “, rent, or royalty” both places  
19 it appears in subparagraph (B) and inserting “or  
20 rent”.

21 (b) **ENTITIES NOT PERMITTED TO BE DIS-**  
22 **REGARDED IN DETERMINING ROYALTIES.**—Subsection (c)  
23 of section 954 of the Internal Revenue Code of 1986 is  
24 amended by adding at the end the following new para-  
25 graph:

1           “(7) ALL ROYALTIES TAKEN INTO ACCOUNT.—  
2           For purposes of determining the foreign personal  
3           holding company income which consists of royalties,  
4           this subsection shall be applied without regard to  
5           any election to disregard any entity which would be  
6           taken into account for Federal income tax purposes  
7           but for such election.”.

8           (c) CERTAIN OTHER INCOME DERIVED FROM  
9           UNITED STATES INTANGIBLES TAKEN INTO ACCOUNT AS  
10          SUBPART F INCOME.—Subsection (d) of section 954 of  
11          the Internal Revenue Code of 1986 is amended by adding  
12          at the end the following new paragraph:

13                 “(5) SPECIAL RULE FOR CERTAIN PRODUCTS  
14                 PRODUCED PURSUANT TO INTANGIBLES MADE  
15                 AVAILABLE BY UNITED STATES PERSONS.—For pur-  
16                 poses of this subsection, personal property shall be  
17                 treated as having been purchased from a related per-  
18                 son if any intangible property (within the meaning  
19                 of section 936(h)(3)(B)) made available to a con-  
20                 trolled foreign corporation, directly or indirectly, by  
21                 a related person which is a United States person  
22                 contributes, directly or indirectly, to the production  
23                 of such personal property by the controlled foreign  
24                 corporation. The preceding sentence shall not apply  
25                 to any personal property produced directly by the

1 controlled foreign corporation, without regard to any  
2 election to disregard any entity which would be  
3 taken into account for Federal income tax purposes  
4 but for such election.”.

5 (d) EFFECTIVE DATE.—The amendments made by  
6 this section shall apply to taxable years of foreign corpora-  
7 tions beginning after December 31, 2011, and to taxable  
8 years of United States shareholders within which or with  
9 which such tax years of such foreign corporations end.

10 **SEC. 4. TAXATION OF BOOT RECEIVED IN REORGANIZA-**  
11 **TIONS.**

12 (a) IN GENERAL.—Paragraph (2) of section 356(a)  
13 of the Internal Revenue Code of 1986 is amended—

14 (1) by striking “If an exchange” and inserting  
15 “Except as otherwise provided by the Secretary—

16 “(A) IN GENERAL.—If an exchange”;

17 (2) by striking “then there shall be” and all  
18 that follows through “February 28, 1913” and in-  
19 serting “then the amount of other property or  
20 money shall be treated as a dividend to the extent  
21 of the earnings and profits of the corporation”; and

22 (3) by adding at the end the following new sub-  
23 paragraph:

24 “(B) CERTAIN REORGANIZATIONS.—In the  
25 case of a reorganization described in section



1           368(a)(1)(D) with respect to which the require-  
2           ments of subparagraphs (A) and (B) of section  
3           354(b)(1) are met (or any other reorganization  
4           specified by the Secretary), in applying sub-  
5           paragraph (A)—

6                   “(i) the earnings and profits of each  
7                   corporation which is a party to the reorga-  
8                   nization shall be taken into account, and

9                   “(ii) the amount which is a dividend  
10                  (and source thereof) shall be determined  
11                  under rules similar to the rules of para-  
12                  graphs (2) and (5) of section 304(b).”.

13           (b) EARNINGS AND PROFITS.—Paragraph (7) of sec-  
14           tion 312(n) of the Internal Revenue Code of 1986 is  
15           amended by adding at the end the following: “A similar  
16           rule shall apply to an exchange to which section 356(a)(1)  
17           applies.”.

18           (c) CONFORMING AMENDMENT.—Paragraph (1) of  
19           section 356(a) of the Internal Revenue Code of 1986 is  
20           amended by striking “then the gain” and inserting “then  
21           (except as provided in paragraph (2)) the gain”.

22           (d) EFFECTIVE DATE.—The amendments made by  
23           this section shall apply to exchanges after the date of the  
24           enactment of this Act.

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