

112TH CONGRESS
1ST SESSION

S. 45

To amend the Internal Revenue Code of 1986 to provide for the taxation of income of controlled foreign corporations attributable to imported property.

IN THE SENATE OF THE UNITED STATES

JANUARY 25 (legislative day, JANUARY 5), 2011

Mr. WHITEHOUSE (for himself, Mr. LEAHY, Mr. SANDERS, Mrs. BOXER, Mr. DURBIN, Mr. BROWN of Ohio, and Mr. HARKIN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide for the taxation of income of controlled foreign corporations attributable to imported property.

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 “Offshoring Prevention
5 Act”.

1 **SEC. 2. TAXATION OF INCOME OF CONTROLLED FOREIGN**
 2 **CORPORATIONS ATTRIBUTABLE TO IM-**
 3 **PORTED PROPERTY.**

4 (a) **GENERAL RULE.**—Subsection (a) of section 954
 5 of the Internal Revenue Code of 1986 is amended by strik-
 6 ing the period at the end of paragraph (5) and inserting
 7 “, and”, by redesignating paragraph (5) as paragraph (4),
 8 and by adding at the end the following new paragraph:

9 “(5) imported property income for the taxable
 10 year (determined under subsection (j) and reduced
 11 as provided in subsection (b)(5)).”.

12 (b) **DEFINITION OF IMPORTED PROPERTY IN-**
 13 **COME.**—Section 954 of the Internal Revenue Code of 1986
 14 is amended by adding at the end the following new sub-
 15 section:

16 “(j) **IMPORTED PROPERTY INCOME.**—

17 “(1) **IN GENERAL.**—For purposes of subsection
 18 (a)(5), the term ‘imported property income’ means
 19 income (whether in the form of profits, commissions,
 20 fees, or otherwise) derived in connection with—

21 “(A) manufacturing, producing, growing,
 22 or extracting imported property;

23 “(B) the sale, exchange, or other disposi-
 24 tion of imported property; or

25 “(C) the lease, rental, or licensing of im-
 26 ported property.

1 Such term shall not include any foreign oil and gas
2 extraction income (within the meaning of section
3 907(c)) or any foreign oil related income (within the
4 meaning of section 907(c)).

5 “(2) IMPORTED PROPERTY.—For purposes of
6 this subsection—

7 “(A) IN GENERAL.—Except as otherwise
8 provided in this paragraph, the term ‘imported
9 property’ means property which is imported
10 into the United States by the controlled foreign
11 corporation or a related person.

12 “(B) IMPORTED PROPERTY INCLUDES CER-
13 TAIN PROPERTY IMPORTED BY UNRELATED
14 PERSONS.—The term ‘imported property’ in-
15 cludes any property imported into the United
16 States by an unrelated person if, when such
17 property was sold to the unrelated person by
18 the controlled foreign corporation (or a related
19 person), it was reasonable to expect that—

20 “(i) such property would be imported
21 into the United States; or

22 “(ii) such property would be used as
23 a component in other property which would
24 be imported into the United States.

1 “(C) EXCEPTION FOR PROPERTY SUBSE-
2 QUENTLY EXPORTED.—The term ‘imported
3 property’ does not include any property which is
4 imported into the United States and which—

5 “(i) before substantial use in the
6 United States, is sold, leased, or rented by
7 the controlled foreign corporation or a re-
8 lated person for direct use, consumption,
9 or disposition outside the United States; or

10 “(ii) is used by the controlled foreign
11 corporation or a related person as a com-
12 ponent in other property which is so sold,
13 leased, or rented.

14 “(D) EXCEPTION FOR CERTAIN AGRICUL-
15 TURAL COMMODITIES.—The term ‘imported
16 property’ does not include any agricultural com-
17 modity which is not grown in the United States
18 in commercially marketable quantities.

19 “(3) DEFINITIONS AND SPECIAL RULES.—

20 “(A) IMPORT.—For purposes of this sub-
21 section, the term ‘import’ means entering, or
22 withdrawal from warehouse, for consumption or
23 use. Such term includes any grant of the right
24 to use intangible property (as defined in section
25 936(h)(3)(B)) in the United States.

1 “(B) UNITED STATES.—For purposes of
2 this subsection, the term ‘United States’ in-
3 cludes the Commonwealth of Puerto Rico, the
4 Virgin Islands of the United States, Guam,
5 American Samoa, and the Commonwealth of
6 the Northern Mariana Islands.

7 “(C) UNRELATED PERSON.—For purposes
8 of this subsection, the term ‘unrelated person’
9 means any person who is not a related person
10 with respect to the controlled foreign corpora-
11 tion.

12 “(D) COORDINATION WITH FOREIGN BASE
13 COMPANY SALES INCOME.—For purposes of this
14 section, the term ‘foreign base company sales
15 income’ shall not include any imported property
16 income.”.

17 (c) SEPARATE APPLICATION OF LIMITATIONS ON
18 FOREIGN TAX CREDIT FOR IMPORTED PROPERTY IN-
19 COME.—

20 (1) IN GENERAL.—Paragraph (1) of section
21 904(d) of the Internal Revenue Code of 1986 is
22 amended by striking “and” at the end of subpara-
23 graph (A), by redesignating subparagraph (B) as
24 subparagraph (C), and by inserting after subpara-
25 graph (A) the following new subparagraph:

1 “(B) imported property income, and”.

2 (2) IMPORTED PROPERTY INCOME DEFINED.—
 3 Paragraph (2) of section 904(d) of such Code is
 4 amended by redesignating subparagraphs (I), (J),
 5 and (K) as subparagraphs (J), (K), and (L), respec-
 6 tively, and by inserting after subparagraph (H) the
 7 following new subparagraph:

8 “(I) IMPORTED PROPERTY INCOME.—The
 9 term ‘imported property income’ means any in-
 10 come received or accrued by any person which
 11 is of a kind which would be imported property
 12 income (as defined in section 954(j)).”.

13 (3) CONFORMING AMENDMENT.—Clause (ii) of
 14 section 904(d)(2)(A) of such Code is amended by in-
 15 sserting “or imported property income” after “pas-
 16 sive category income”.

17 (d) TECHNICAL AMENDMENTS.—

18 (1) Clause (iii) of section 952(c)(1)(B) of the
 19 Internal Revenue Code of 1986 is amended—

20 (A) by redesignating subclauses (II), (III),
 21 (IV), and (V) as subclauses (III), (IV), (V), and
 22 (VI), and

23 (B) by inserting after subclause (I) the fol-
 24 lowing new subclause:

1 “(II) imported property in-
2 come,”.

3 (2) The last sentence of paragraph (4) of sec-
4 tion 954(b) of such Code is amended by striking
5 “subsection (a)(5)” and inserting “subsection
6 (a)(4)”.

7 (3) Paragraph (5) of section 954(b) of such
8 Code is amended by striking “and the foreign base
9 company oil related income” and inserting “the for-
10 eign base company oil related income, and the im-
11 ported property income”.

12 (e) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to taxable years of foreign corpora-
14 tions beginning after the date of the enactment of this
15 Act, and to taxable years of United States shareholders
16 within which or with which such taxable years of such for-
17 eign corporations end.

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