

118TH CONGRESS
1ST SESSION

H. R. 4029

To secure the supply chain by providing an election to determine foreign income taxes paid or incurred to certain Western Hemisphere countries without regard to certain regulations.

IN THE HOUSE OF REPRESENTATIVES

JUNE 12, 2023

Mr. HERN (for himself, Mr. ESTES, Mrs. MILLER of West Virginia, Ms. TENNEY, Mr. FERGUSON, Mr. SCHWEIKERT, Mr. SMITH of Nebraska, and Mr. FEENSTRA) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To secure the supply chain by providing an election to determine foreign income taxes paid or incurred to certain Western Hemisphere countries without regard to certain regulations.

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 “Supply Chain Security
5 Act”.

1 **SEC. 2. ELECTION TO DETERMINE FOREIGN INCOME TAXES**
2 **PAID OR INCURRED TO CERTAIN WESTERN**
3 **HEMISPHERE COUNTRIES WITHOUT REGARD**
4 **TO CERTAIN REGULATIONS.**

5 (a) ELECTION WITH RESPECT TO DETERMINING
6 CERTAIN FOREIGN INCOME TAXES.—In the case of any
7 taxpayer which elects (at such time and in such manner
8 as the Secretary may provide) the application of this sub-
9 section, the determination of whether any Western Hemi-
10 sphere tax paid or accrued by such taxpayer is an income,
11 war profits, or excess profits tax for purposes of any provi-
12 sion of the Internal Revenue Code of 1986 shall be made
13 without regard to any specified regulation.

14 (b) SEPARATE ELECTION WITH RESPECT TO ALLO-
15 CATION AND APPORTIONMENT OF FOREIGN INCOME
16 TAXES RELATING TO DISREGARDED PAYMENTS FROM
17 CERTAIN DISREGARDED ENTITIES.—

18 (1) IN GENERAL.—If the owner of any specified
19 disregarded entity elects (at such time and in such
20 manner as the Secretary may provide) the applica-
21 tion of this subsection with respect to such entity,
22 then for purposes of allocating and apportioning any
23 foreign income taxes (as defined in section 986(a)(4)
24 of the Internal Revenue Code of 1986 and deter-
25 mined after the application of subsection (a) of this
26 section) paid or accrued by reason of any remittance

1 made by such entity to such owner during the appli-
2 cable period, any items of foreign gross income in-
3 cluded by reason of the receipt of such remittance
4 shall be assigned to a category based on current and
5 accumulated earnings and profits of such entity (in
6 lieu of being assigned on the basis of the tax book
7 value method described in a specified regulation).

8 (2) SPECIFIED DISREGARDED ENTITY.—For
9 purposes of this subsection, the term “specified dis-
10 regarded entity” means any entity (including any
11 trade or business) if—

12 (A) such entity is disregarded as an entity
13 separate from its owner for purposes of apply-
14 ing chapter 1 of the Internal Revenue Code of
15 1986,

16 (B) such entity is created or organized in
17 a possession of the United States or a foreign
18 country described in subsection (d)(1)(B),

19 (C) at all times after December 31, 2019
20 (or, if later, the date on which such entity is
21 created or organized), substantially all of the
22 income of such entity is derived from trades or
23 businesses conducted in the possession or coun-
24 try referred to in subparagraph (B), and

1 (D) at all times after the date on which
2 such entity is created or organized, such entity
3 maintains separate books and records.

4 (c) APPLICATION TO DEEMED PAID CREDIT.—In the
5 case of any tax paid or accrued by a controlled foreign
6 corporation and deemed to have been paid by a United
7 States shareholder under section 960 of the Internal Rev-
8 enue Code of 1986—

9 (1) any election under subsection (a) or (b)
10 shall be made by such controlled foreign corporation
11 and shall be binding on all United States share-
12 holders of such controlled foreign corporation, and

13 (2) the applicable period under subsection (d)
14 shall be determined with respect to the taxable years
15 of such controlled foreign corporation.

16 (d) WESTERN HEMISPHERE TAX.—For purposes of
17 this section—

18 (1) IN GENERAL.—The term “Western Hemi-
19 sphere tax” means any tax which is paid or accrued
20 for a taxable year which is in the applicable period
21 to—

22 (A) any possession of the United States, or

23 (B) any foreign country (other than Cuba
24 and Venezuela) which is located in North, Cen-

1 tral, or South America (including the West In-
2 dies).

3 (2) APPLICABLE PERIOD.—The term “applica-
4 ble period” means—

5 (A) in the case of any election made under
6 subsection (a), all taxable years beginning after
7 December 31, 2021, and before January 1,
8 2027, and

9 (B) in the case of any election made under
10 subsection (b), all taxable years beginning after
11 December 31, 2019, and before January 1,
12 2027.

13 (3) DETERMINATION BASED ON TAXABLE YEAR
14 FOR WHICH TAX ACTUALLY PAID OR ACCRUED.—

15 The determination of the taxable year for which any
16 tax is paid or accrued for purposes of determining
17 whether a foreign tax is paid or accrued for a tax-
18 able year which is in the applicable period shall be
19 made without regard to any taxable year with re-
20 spect to which such tax is deemed to have been paid
21 under section 904(c) or 960 of the Internal Revenue
22 Code of 1986.

23 (e) SPECIFIED REGULATION.—For purposes of this
24 section, the term “specified regulation” means—

1 (1) Treasury Regulations relating to “Guidance
2 Related to the Foreign Tax Credit; Clarification of
3 Foreign-Derived Intangible Income” (87 Fed. Reg.
4 276; published on January 4, 2022),

5 (2) proposed Treasury Regulations relating to
6 “Guidance Related to the Foreign Tax Credit” (87
7 Fed. Reg. 71271; published on November 22, 2022),
8 and

9 (3) any regulation or other guidance published
10 after January 4, 2022, to the extent that such regu-
11 lation or other guidance is substantially similar to,
12 or predicated upon, any portion of the regulations
13 referred to in paragraph (1) or (2).

14 In the case of any regulation or other guidance which is
15 published after the date of the enactment of this Act and
16 any portion of which is described in paragraph (3), the
17 Secretary shall identify such regulation or guidance (or
18 portion thereof) as not applying with respect to taxpayers
19 which have elected the application of subsection (a) or (b),
20 as the case may be.

21 (f) SECRETARY.—For purposes of this section, the
22 term “Secretary” means the Secretary of the Treasury or
23 the Secretary’s delegate.

○