

111TH CONGRESS
2D SESSION

H. R. 5893

To amend the Internal Revenue Code of 1986 to create jobs through increased investment in infrastructure, to eliminate loopholes which encourage companies to move operations offshore, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 28, 2010

Mr. LEVIN (for himself, Mr. RANGEL, Mr. STARK, Mr. McDERMOTT, Mr. LEWIS of Georgia, Mr. BECERRA, Mr. PASCRELL, Mr. CROWLEY, Ms. BERKLEY, Mr. MEEK of Florida, Mr. DAVIS of Illinois, Mr. ETHERIDGE, Mr. HIGGINS, Mr. GARAMENDI, Mrs. DAHLKEMPER, Mr. KAGEN, Mr. PERRIELLO, Ms. KILROY, Mr. McMAHON, Mr. KISSELL, and Mr. CARNEY) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on the Budget, 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 create jobs through increased investment in infrastructure, to eliminate loopholes which encourage companies to move operations offshore, 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,*

1 **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE;**
 2 **TABLE OF CONTENTS.**

3 (a) **SHORT TITLE.**—This Act may be cited as the
 4 “Investing in American Jobs and Closing Tax Loopholes
 5 Act of 2010”.

6 (b) **AMENDMENT OF 1986 CODE.**—Except as other-
 7 wise expressly provided, whenever in this Act an amend-
 8 ment or repeal is expressed in terms of an amendment
 9 to, or repeal of, a section or other provision, the reference
 10 shall be considered to be made to a section or other provi-
 11 sion of the Internal Revenue Code of 1986.

12 (c) **TABLE OF CONTENTS.**—The table of contents for
 13 this Act is as follows:

Sec. 1. Short title; amendment of 1986 Code; table of contents.

TITLE I—INFRASTRUCTURE INCENTIVES

Sec. 101. Extension of Build America Bonds.

Sec. 102. Exempt-facility bonds for sewage and water supply facilities.

Sec. 103. Extension of exemption from alternative minimum tax treatment for certain tax-exempt bonds.

Sec. 104. Extension and additional allocations of recovery zone bond authority.

Sec. 105. Allowance of new markets tax credit against alternative minimum tax.

Sec. 106. Extension of tax-exempt eligibility for loans guaranteed by Federal home loan banks.

Sec. 107. Extension of temporary small issuer rules for allocation of tax-exempt interest expense by financial institutions.

TITLE II—EMERGENCY FUND FOR JOB CREATION AND ASSISTANCE

Sec. 201. Extension of the Emergency Fund for Job Creation and Assistance.

TITLE III—FOREIGN PROVISIONS

Sec. 301. Rules to prevent splitting foreign tax credits from the income to which they relate.

Sec. 302. Denial of foreign tax credit with respect to foreign income not subject to United States taxation by reason of covered asset acquisitions.

1 (A) by striking “January 1, 2011” and in-
 2 serting “January 1, 2013”; and

3 (B) by striking “QUALIFIED BONDS
 4 ISSUED BEFORE 2011” in the heading and in-
 5 serting “CERTAIN QUALIFIED BONDS”.

6 (c) REDUCTION IN PERCENTAGE OF PAYMENTS TO
 7 ISSUERS.—Subsection (b) of section 6431 is amended—

8 (1) by striking “The Secretary” and inserting
 9 the following:

10 “(1) IN GENERAL.—The Secretary”;

11 (2) by striking “35 percent” and inserting “the
 12 applicable percentage”; and

13 (3) by adding at the end the following new
 14 paragraph:

15 “(2) APPLICABLE PERCENTAGE.—For purposes
 16 of this subsection, the term ‘applicable percentage’
 17 means the percentage determined in accordance with
 18 the following table:

“In the case of a qualified bond issued during cal- endar year:	The applicable percentage is:
2009 or 2010	35 percent
2011	32 percent
2012	30 percent.”.

19 (d) CURRENT REFUNDINGS PERMITTED.—Sub-
 20 section (g) of section 54AA is amended by adding at the
 21 end the following new paragraph:

1 “(3) TREATMENT OF CURRENT REFUNDING
2 BONDS.—

3 “(A) IN GENERAL.—For purposes of this
4 subsection, the term ‘qualified bond’ includes
5 any bond (or series of bonds) issued to refund
6 a qualified bond if—

7 “(i) the average maturity date of the
8 issue of which the refunding bond is a part
9 is not later than the average maturity date
10 of the bonds to be refunded by such issue,

11 “(ii) the amount of the refunding
12 bond does not exceed the outstanding
13 amount of the refunded bond, and

14 “(iii) the refunded bond is redeemed
15 not later than 90 days after the date of the
16 issuance of the refunding bond.

17 “(B) APPLICABLE PERCENTAGE.—In the
18 case of a refunding bond referred to in subpara-
19 graph (A), the applicable percentage with re-
20 spect to such bond under section 6431(b) shall
21 be the lowest percentage specified in paragraph
22 (2) of such section.

23 “(C) DETERMINATION OF AVERAGE MATU-
24 RITY.—For purposes of subparagraph (A)(i),

1 average maturity shall be determined in accord-
2 ance with section 147(b)(2)(A).”.

3 (e) CLARIFICATION RELATED TO LEVEES AND
4 FLOOD CONTROL PROJECTS.—Subparagraph (A) of sec-
5 tion 54AA(g)(2) is amended by inserting “(including cap-
6 ital expenditures for levees and other flood control
7 projects)” after “capital expenditures”.

8 **SEC. 102. EXEMPT-FACILITY BONDS FOR SEWAGE AND**
9 **WATER SUPPLY FACILITIES.**

10 (a) BONDS FOR WATER AND SEWAGE FACILITIES
11 EXEMPT FROM VOLUME CAP ON PRIVATE ACTIVITY
12 BONDS.—

13 (1) IN GENERAL.—Paragraph (3) of section
14 146(g) is amended by inserting “(4), (5),” after
15 “(2),”.

16 (2) CONFORMING AMENDMENT.—Paragraphs
17 (2) and (3)(B) of section 146(k) are both amended
18 by striking “(4), (5), (6),” and inserting “(6)”.

19 (b) TAX-EXEMPT ISSUANCE BY INDIAN TRIBAL GOV-
20 ERNMENTS.—

21 (1) IN GENERAL.—Subsection (c) of section
22 7871 is amended by adding at the end the following
23 new paragraph:

24 “(4) EXCEPTION FOR BONDS FOR WATER AND
25 SEWAGE FACILITIES.—Paragraph (2) shall not apply

1 to an exempt facility bond 95 percent or more of the
2 net proceeds (as defined in section 150(a)(3)) of
3 which are to be used to provide facilities described
4 in paragraph (4) or (5) of section 142(a).”.

5 (2) CONFORMING AMENDMENT.—Paragraph (2)
6 of section 7871(e) is amended by striking “para-
7 graph (3)” and inserting “paragraphs (3) and (4)”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to obligations issued after the date
10 of the enactment of this Act.

11 **SEC. 103. EXTENSION OF EXEMPTION FROM ALTERNATIVE**
12 **MINIMUM TAX TREATMENT FOR CERTAIN**
13 **TAX-EXEMPT BONDS.**

14 (a) IN GENERAL.—Clause (vi) of section 57(a)(5)(C)
15 is amended—

16 (1) by striking “January 1, 2011” in subclause
17 (I) and inserting “January 1, 2012”; and

18 (2) by striking “AND 2010” in the heading and
19 inserting “, 2010, AND 2011”.

20 (b) ADJUSTED CURRENT EARNINGS.—Clause (iv) of
21 section 56(g)(4)(B) is amended—

22 (1) by striking “January 1, 2011” in subclause
23 (I) and inserting “January 1, 2012”; and

24 (2) by striking “AND 2010” in the heading and
25 inserting “, 2010, AND 2011”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to obligations issued after Decem-
3 ber 31, 2010.

4 **SEC. 104. EXTENSION AND ADDITIONAL ALLOCATIONS OF**
5 **RECOVERY ZONE BOND AUTHORITY.**

6 (a) EXTENSION OF RECOVERY ZONE BOND AUTHOR-
7 ITY.—Section 1400U–2(b)(1) and section 1400U–
8 3(b)(1)(B) are each amended by striking “January 1,
9 2011” and inserting “January 1, 2012”.

10 (b) ADDITIONAL ALLOCATIONS OF RECOVERY ZONE
11 BOND AUTHORITY BASED ON UNEMPLOYMENT.—Section
12 1400U–1 is amended by adding at the end the following
13 new subsection:

14 “(c) ALLOCATION OF 2010 RECOVERY ZONE BOND
15 LIMITATIONS BASED ON UNEMPLOYMENT.—

16 “(1) IN GENERAL.—The Secretary shall allo-
17 cate the 2010 national recovery zone economic devel-
18 opment bond limitation and the 2010 national recov-
19 ery zone facility bond limitation among the States in
20 the proportion that each such State’s 2009 unem-
21 ployment number bears to the aggregate of the 2009
22 unemployment numbers for all of the States.

23 “(2) MINIMUM ALLOCATION.—The Secretary
24 shall adjust the allocations under paragraph (1) for
25 each State to the extent necessary to ensure that no

1 State (prior to any reduction under paragraph (3))
2 receives less than 0.9 percent of the 2010 national
3 recovery zone economic development bond limitation
4 and 0.9 percent of the 2010 national recovery zone
5 facility bond limitation.

6 “(3) ALLOCATIONS BY STATES.—

7 “(A) IN GENERAL.—Each State with re-
8 spect to which an allocation is made under
9 paragraph (1) shall reallocate such allocation
10 among the counties and large municipalities (as
11 defined in subsection (a)(3)(B)) in such State
12 in the proportion that each such county’s or
13 municipality’s 2009 unemployment number
14 bears to the aggregate of the 2009 unemploy-
15 ment numbers for all the counties and large
16 municipalities (as so defined) in such State.

17 “(B) 2010 ALLOCATION REDUCED BY
18 AMOUNT OF PREVIOUS ALLOCATION.—Each
19 State shall reduce (but not below zero)—

20 “(i) the amount of the 2010 national
21 recovery zone economic development bond
22 limitation allocated to each county or large
23 municipality (as so defined) in such State
24 by the amount of the national recovery
25 zone economic development bond limitation

1 allocated to such county or large municipi-
2 pality under subsection (a)(3)(A) (deter-
3 mined without regard to any waiver there-
4 of), and

5 “(ii) the amount of the 2010 national
6 recovery zone facility bond limitation allo-
7 cated to each county or large municipality
8 (as so defined) in such State by the
9 amount of the national recovery zone facil-
10 ity bond limitation allocated to such county
11 or large municipality under subsection
12 (a)(3)(A) (determined without regard to
13 any waiver thereof).

14 “(C) WAIVER OF SUBALLOCATIONS.—A
15 county or municipality may waive any portion
16 of an allocation made under this paragraph. A
17 county or municipality shall be treated as hav-
18 ing waived any portion of an allocation made
19 under this paragraph which has not been allo-
20 cated to a bond issued before May 1, 2011. Any
21 allocation waived (or treated as waived) under
22 this subparagraph may be used or reallocated
23 by the State.

24 “(D) SPECIAL RULE FOR A MUNICIPALITY
25 IN A COUNTY.—In the case of any large municipi-

1 pality any portion of which is in a county, such
2 portion shall be treated as part of such municipi-
3 pality and not part of such county.

4 “(4) 2009 UNEMPLOYMENT NUMBER.—For
5 purposes of this subsection, the term ‘2009 unem-
6 ployment number’ means, with respect to any State,
7 county or municipality, the number of individuals in
8 such State, county, or municipality who were deter-
9 mined to be unemployed by the Bureau of Labor
10 Statistics for December 2009.

11 “(5) 2010 NATIONAL LIMITATIONS.—

12 “(A) RECOVERY ZONE ECONOMIC DEVEL-
13 OPMENT BONDS.—The 2010 national recovery
14 zone economic development bond limitation is
15 \$10,000,000,000. Any allocation of such limita-
16 tion under this subsection shall be treated for
17 purposes of section 1400U–2 in the same man-
18 ner as an allocation of national recovery zone
19 economic development bond limitation.

20 “(B) RECOVERY ZONE FACILITY BONDS.—
21 The 2010 national recovery zone facility bond
22 limitation is \$15,000,000,000. Any allocation of
23 such limitation under this subsection shall be
24 treated for purposes of section 1400U–3 in the

1 same manner as an allocation of national recov-
 2 ery zone facility bond limitation.”.

3 (c) **AUTHORITY OF STATE TO WAIVE CERTAIN 2009**
 4 **ALLOCATIONS.**—Subparagraph (A) of section 1400U–
 5 1(a)(3) is amended by adding at the end the following:
 6 “A county or municipality shall be treated as having
 7 waived any portion of an allocation made under this sub-
 8 paragraph which has not been allocated to a bond issued
 9 before May 1, 2011. Any allocation waived (or treated as
 10 waived) under this subparagraph may be used or reallo-
 11 cated by the State.”.

12 **SEC. 105. ALLOWANCE OF NEW MARKETS TAX CREDIT**
 13 **AGAINST ALTERNATIVE MINIMUM TAX.**

14 (a) **IN GENERAL.**—Subparagraph (B) of section
 15 38(c)(4) is amended by redesignating clauses (v) through
 16 (ix) as clauses (vi) through (x), respectively, and by insert-
 17 ing after clause (iv) the following new clause:

18 “(v) the credit determined under sec-
 19 tion 45D, but only with respect to credits
 20 determined with respect to qualified equity
 21 investments (as defined in section 45D(b))
 22 initially made before January 1, 2012,”.

23 (b) **EFFECTIVE DATE.**—The amendments made by
 24 this section shall apply to credits determined with respect
 25 to qualified equity investments (as defined in section

1 **TITLE II—EMERGENCY FUND**
2 **FOR JOB CREATION AND AS-**
3 **SISTANCE**

4 **SEC. 201. EXTENSION OF THE EMERGENCY FUND FOR JOB**
5 **CREATION AND ASSISTANCE.**

6 (a) IN GENERAL.—Section 403(c) of the Social Secu-
7 rity Act (42 U.S.C. 603(c)) is amended—

8 (1) in paragraph (1), by striking “Emergency
9 Contingency Fund for State Temporary Assistance
10 for Needy Families Programs” and inserting “Emer-
11 gency Fund for Job Creation and Assistance”;

12 (2) in paragraph (2)(A), by inserting “, and for
13 fiscal year 2011, such sums as may be necessary to
14 carry out this subsection” before “for payment”;

15 (3) by striking paragraph (2)(B) and inserting
16 the following:

17 “(B) AVAILABILITY AND USE OF FUNDS.—

18 “(i) FISCAL YEARS 2009 AND 2010.—

19 The amounts appropriated to the Emer-
20 gency Fund under subparagraph (A) for
21 fiscal year 2009 shall remain available
22 through fiscal year 2010 and shall be used
23 to make grants to States in each of fiscal
24 years 2009 and 2010 in accordance with
25 paragraph (3), except that the amounts

1 shall remain available through fiscal year
2 2011 to make grants and payments to
3 States in accordance with paragraph
4 (3)(C) to cover expenditures to subsidize
5 employment positions held by individuals
6 placed in the positions before fiscal year
7 2011.

8 “(ii) FISCAL YEAR 2011.—Subject to
9 clause (iii), the amounts appropriated to
10 the Emergency Fund under subparagraph
11 (A) for fiscal year 2011 shall remain avail-
12 able through fiscal year 2012 and shall be
13 used to make grants to States based on ex-
14 penditures in fiscal year 2011 for benefits
15 and services provided in fiscal year 2011 in
16 accordance with the requirements of para-
17 graph (3).

18 “(iii) RESERVATION OF FUNDS.—Of
19 the amounts appropriated to the Emer-
20 gency Fund under subparagraph (A) for
21 fiscal year 2011, \$500,000 shall be placed
22 in reserve for use in fiscal year 2012, and
23 shall be used to award grants for any ex-
24 penditures described in this subsection in-

1 curred by States after September 30,
2 2011.”;

3 (4) in paragraph (2)(C), by striking “2010”
4 and inserting “2012”;

5 (5) in paragraph (3)—

6 (A) in clause (i) of each of subparagraphs
7 (A), (B), and (C), by striking “year 2009 or
8 2010” and inserting “years 2009 through
9 2011”; and

10 (B) in subparagraph (C), by adding at the
11 end the following:

12 “(iv) LIMITATION ON EXPENDITURES
13 FOR SUBSIDIZED EMPLOYMENT.—An ex-
14 penditure for subsidized employment shall
15 be taken into account under clause (ii)
16 only if the expenditure is used to subsidize
17 employment for—

18 “(I) a member of a needy family
19 (without regard to whether the family
20 is receiving assistance under the State
21 program funded under this part); or

22 “(II) an individual who has ex-
23 hausted (or, within 60 days, will ex-
24 haust) all rights to receive unemploy-
25 ment compensation under Federal and

1 State law, and who is a member of a
2 needy family.”;

3 (6) by striking paragraph (5) and inserting the
4 following:

5 “(5) LIMITATIONS ON PAYMENTS.—

6 “(A) FISCAL YEARS 2009 AND 2010.—The
7 total amount payable to a single State under
8 subsection (b) and this subsection for fiscal
9 years 2009 and 2010 combined shall not exceed
10 50 percent of the annual State family assist-
11 ance grant.

12 “(B) FISCAL YEAR 2011.—The total
13 amount payable to a single State under sub-
14 section (b) and this subsection for fiscal year
15 2011 shall not exceed 30 percent of the annual
16 State family assistance grant.”; and

17 (7) in paragraph (6), by inserting “or for ex-
18 penditures described in paragraph (3)(C)(iv)” before
19 the period.

20 (b) CONFORMING AMENDMENTS.—Section 2101 of
21 division B of the American Recovery and Reinvestment
22 Act of 2009 (Public Law 111–5) is amended—

23 (1) in subsection (a)(2)—

24 (A) by striking “2010” and inserting
25 “2011”; and

1 (B) by striking all that follows “repealed”
2 and inserting a period; and

3 (2) in subsection (d)(1), by striking “2010”
4 and inserting “2011”.

5 (c) PROGRAM GUIDANCE.—The Secretary of Health
6 and Human Services shall issue program guidance, with-
7 out regard to the requirements of section 553 of title 5,
8 United States Code, which ensures that the funds provided
9 under the amendments made by this section to a jurisdic-
10 tion for subsidized employment do not support any sub-
11 sidized employment position the annual salary of which
12 is greater than, at State option—

13 (1) 200 percent of the poverty line (within the
14 meaning of section 673(2) of the Omnibus Budget
15 Reconciliation Act of 1981, including any revision
16 required by such section 673(2)) for a family of 4;
17 or

18 (2) the median wage in the jurisdiction.

19 **TITLE III—FOREIGN PROVISIONS**

20 **SEC. 301. RULES TO PREVENT SPLITTING FOREIGN TAX**

21 **CREDITS FROM THE INCOME TO WHICH THEY** 22 **RELATE.**

23 (a) IN GENERAL.—Subpart A of part III of sub-
24 chapter N of chapter 1 is amended by adding at the end
25 the following new section:

1 **“SEC. 909. SUSPENSION OF TAXES AND CREDITS UNTIL RE-**
2 **LATED INCOME TAKEN INTO ACCOUNT.**

3 “(a) IN GENERAL.—If there is a foreign tax credit
4 splitting event with respect to a foreign income tax paid
5 or accrued by the taxpayer, such tax shall not be taken
6 into account for purposes of this title before the taxable
7 year in which the related income is taken into account
8 under this chapter by the taxpayer.

9 “(b) SPECIAL RULES WITH RESPECT TO SECTION
10 902 CORPORATIONS.—If there is a foreign tax credit split-
11 ting event with respect to a foreign income tax paid or
12 accrued by a section 902 corporation, such tax shall not
13 be taken into account—

14 “(1) for purposes of section 902 or 960, or

15 “(2) for purposes of determining earnings and
16 profits under section 964(a),

17 before the taxable year in which the related income is
18 taken into account under this chapter by such section 902
19 corporation or a domestic corporation which meets the
20 ownership requirements of subsection (a) or (b) of section
21 902 with respect to such section 902 corporation.

22 “(c) SPECIAL RULES.—For purposes of this sec-
23 tion—

24 “(1) APPLICATION TO PARTNERSHIPS, ETC.—In
25 the case of a partnership, subsections (a) and (b)
26 shall be applied at the partner level. Except as oth-

1 erwise provided by the Secretary, a rule similar to
2 the rule of the preceding sentence shall apply in the
3 case of any S corporation or trust.

4 “(2) TREATMENT OF FOREIGN TAXES AFTER
5 SUSPENSION.—In the case of any foreign income tax
6 not taken into account by reason of subsection (a)
7 or (b), except as otherwise provided by the Sec-
8 retary, such tax shall be so taken into account in the
9 taxable year referred to in such subsection (other
10 than for purposes of section 986(a)) as a foreign in-
11 come tax paid or accrued in such taxable year.

12 “(d) DEFINITIONS.—For purposes of this section—

13 “(1) FOREIGN TAX CREDIT SPLITTING
14 EVENT.—There is a foreign tax credit splitting event
15 with respect to a foreign income tax if the related
16 income is (or will be) taken into account under this
17 chapter by a covered person.

18 “(2) FOREIGN INCOME TAX.—The term ‘foreign
19 income tax’ means any income, war profits, or excess
20 profits tax paid or accrued to any foreign country or
21 to any possession of the United States.

22 “(3) RELATED INCOME.—The term ‘related in-
23 come’ means, with respect to any portion of any for-
24 eign income tax, the income (or, as appropriate,

1 earnings and profits) to which such portion of for-
2 eign income tax relates.

3 “(4) COVERED PERSON.—The term ‘covered
4 person’ means, with respect to any person who pays
5 or accrues a foreign income tax (hereafter in this
6 paragraph referred to as the ‘payor’)—

7 “(A) any entity in which the payor holds,
8 directly or indirectly, at least a 10 percent own-
9 ership interest (determined by vote or value),

10 “(B) any person which holds, directly or
11 indirectly, at least a 10 percent ownership in-
12 terest (determined by vote or value) in the
13 payor,

14 “(C) any person which bears a relationship
15 to the payor described in section 267(b) or
16 707(b), and

17 “(D) any other person specified by the
18 Secretary for purposes of this paragraph.

19 “(5) SECTION 902 CORPORATION.—The term
20 ‘section 902 corporation’ means any foreign corpora-
21 tion with respect to which one or more domestic cor-
22 porations meets the ownership requirements of sub-
23 section (a) or (b) of section 902.

24 “(e) REGULATIONS.—The Secretary may issue such
25 regulations or other guidance as is necessary or appro-

1 p r i a t e t o c a r r y o u t t h e p u r p o s e s o f t h i s s e c t i o n , i n c l u d i n g
2 r e g u l a t i o n s o r o t h e r g u i d a n c e w h i c h p r o v i d e s —

3 “(1) appropriate exceptions from the provisions
4 of this section, and

5 “(2) for the proper application of this section
6 with respect to hybrid instruments.”.

7 (b) CLERICAL AMENDMENT.—The table of sections
8 for subpart A of part III of subchapter N of chapter 1
9 is amended by adding at the end the following new item:

 “Sec. 909. Suspension of taxes and credits until related income taken into ac-
 count.”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to—

12 (1) foreign income taxes (as defined in section
13 909(d) of the Internal Revenue Code of 1986, as
14 added by this section) paid or accrued after Decem-
15 ber 31, 2010; and

16 (2) foreign income taxes (as so defined) paid or
17 accrued by a section 902 corporation (as so defined)
18 on or before such date (and not deemed paid under
19 section 902(a) or 960 of such Code on or before
20 such date), but only for purposes of applying sec-
21 tions 902 and 960 with respect to periods after such
22 date.

1 Section 909(b)(2) of the Internal Revenue Code of 1986,
2 as added by this section, shall not apply to foreign income
3 taxes described in paragraph (2).

4 **SEC. 302. DENIAL OF FOREIGN TAX CREDIT WITH RESPECT**
5 **TO FOREIGN INCOME NOT SUBJECT TO**
6 **UNITED STATES TAXATION BY REASON OF**
7 **COVERED ASSET ACQUISITIONS.**

8 (a) IN GENERAL.—Section 901 is amended by redес-
9 ignating subsection (m) as subsection (n) and by inserting
10 after subsection (l) the following new subsection:

11 “(m) DENIAL OF FOREIGN TAX CREDIT WITH RE-
12 SPECT TO FOREIGN INCOME NOT SUBJECT TO UNITED
13 STATES TAXATION BY REASON OF COVERED ASSET AC-
14 QUISTIONS.—

15 “(1) IN GENERAL.—In the case of a covered
16 asset acquisition, the disqualified portion of any for-
17 eign income tax determined with respect to the in-
18 come or gain attributable to the relevant foreign as-
19 sets—

20 “(A) shall not be taken into account in de-
21 termining the credit allowed under subsection
22 (a), and

23 “(B) in the case of a foreign income tax
24 paid by a section 902 corporation (as defined in

1 section 909(d)(5)), shall not be taken into ac-
2 count for purposes of section 902 or 960.

3 “(2) COVERED ASSET ACQUISITION.—For pur-
4 poses of this section, the term ‘covered asset acqui-
5 sition’ means—

6 “(A) a qualified stock purchase (as defined
7 in section 338(d)(3)) to which section 338(a)
8 applies,

9 “(B) any transaction which—

10 “(i) is treated as an acquisition of as-
11 sets for purposes of this chapter, and

12 “(ii) is treated as the acquisition of
13 stock of a corporation (or is disregarded)
14 for purposes of the foreign income taxes of
15 the relevant jurisdiction,

16 “(C) any acquisition of an interest in a
17 partnership which has an election in effect
18 under section 754, and

19 “(D) to the extent provided by the Sec-
20 retary, any other similar transaction.

21 “(3) DISQUALIFIED PORTION.—For purposes of
22 this section—

23 “(A) IN GENERAL.—The term ‘disqualified
24 portion’ means, with respect to any covered

1 asset acquisition, for any taxable year, the ratio
2 (expressed as a percentage) of—

3 “(i) the aggregate basis differences
4 (but not below zero) allocable to such tax-
5 able year under subparagraph (B) with re-
6 spect to all relevant foreign assets, divided
7 by

8 “(ii) the income on which the foreign
9 income tax referred to in paragraph (1) is
10 determined (or, if the taxpayer fails to sub-
11 stantiate such income to the satisfaction of
12 the Secretary, such income shall be deter-
13 mined by dividing the amount of such for-
14 eign income tax by the highest marginal
15 tax rate applicable to such income in the
16 relevant jurisdiction).

17 “(B) ALLOCATION OF BASIS DIF-
18 FERENCE.—For purposes of subparagraph
19 (A)(i)—

20 “(i) IN GENERAL.—The basis dif-
21 ference with respect to any relevant foreign
22 asset shall be allocated to taxable years
23 using the applicable cost recovery method
24 under this chapter.

1 “(ii) SPECIAL RULE FOR DISPOSITION
2 OF ASSETS.—Except as otherwise provided
3 by the Secretary, in the case of the disposi-
4 tion of any relevant foreign asset—

5 “(I) the basis difference allocated
6 to the taxable year which includes the
7 date of such disposition shall be the
8 excess of the basis difference with re-
9 spect to such asset over the aggregate
10 basis difference with respect to such
11 asset which has been allocated under
12 clause (i) to all prior taxable years,
13 and

14 “(II) no basis difference with re-
15 spect to such asset shall be allocated
16 under clause (i) to any taxable year
17 thereafter.

18 “(C) BASIS DIFFERENCE.—

19 “(i) IN GENERAL.—The term ‘basis
20 difference’ means, with respect to any rel-
21 evant foreign asset, the excess of—

22 “(I) the adjusted basis of such
23 asset immediately after the covered
24 asset acquisition, over

1 “(II) the adjusted basis of such
2 asset immediately before the covered
3 asset acquisition.

4 “(ii) BUILT-IN LOSS ASSETS.—In the
5 case of a relevant foreign asset with re-
6 spect to which the amount described in
7 clause (i)(II) exceeds the amount described
8 in clause (i)(I), such excess shall be taken
9 into account under this subsection as a
10 basis difference of a negative amount.

11 “(iii) SPECIAL RULE FOR SECTION 338
12 ELECTIONS.—In the case of a covered
13 asset acquisition described in paragraph
14 (2)(A), the covered asset acquisition shall
15 be treated for purposes of this subpara-
16 graph as occurring at the close of the ac-
17 quisition date (as defined in section
18 338(h)(2)).

19 “(4) RELEVANT FOREIGN ASSETS.—For pur-
20 poses of this section, the term ‘relevant foreign
21 asset’ means, with respect to any covered asset ac-
22 quisition, any asset (including any goodwill, going
23 concern value, or other intangible) with respect to
24 such acquisition if income, deduction, gain, or loss
25 attributable to such asset is taken into account in

1 determining the foreign income tax referred to in
2 paragraph (1).

3 “(5) FOREIGN INCOME TAX.—For purposes of
4 this section, the term ‘foreign income tax’ means
5 any income, war profits, or excess profits tax paid
6 or accrued to any foreign country or to any posses-
7 sion of the United States.

8 “(6) TAXES ALLOWED AS A DEDUCTION, ETC.—
9 Sections 275 and 78 shall not apply to any tax
10 which is not allowable as a credit under subsection
11 (a) by reason of this subsection.

12 “(7) REGULATIONS.—The Secretary may issue
13 such regulations or other guidance as is necessary or
14 appropriate to carry out the purposes of this sub-
15 section, including to exempt from the application of
16 this subsection certain covered asset acquisitions,
17 and relevant foreign assets with respect to which the
18 basis difference is de minimis.”.

19 (b) EFFECTIVE DATE.—

20 (1) IN GENERAL.—Except as provided in para-
21 graph (2), the amendments made by this section
22 shall apply to covered asset acquisitions (as defined
23 in section 901(m)(2) of the Internal Revenue Code
24 of 1986, as added by this section) after December
25 31, 2010.

1 (2) TRANSITION RULE.—The amendments
2 made by this section shall not apply to any covered
3 asset acquisition (as so defined) with respect to
4 which the transferor and the transferee are not re-
5 lated if such acquisition is—

6 (A) made pursuant to a written agreement
7 which was binding on May 20, 2010, and at all
8 times thereafter,

9 (B) described in a ruling request submitted
10 to the Internal Revenue Service on or before
11 such date; or

12 (C) described on or before such date in a
13 public announcement or in a filing with the Se-
14 curities and Exchange Commission.

15 (3) RELATED PERSONS.—For purposes of this
16 subsection, a person shall be treated as related to
17 another person if the relationship between such per-
18 sons is described in section 267 or 707(b) of the In-
19 ternal Revenue Code of 1986.

20 **SEC. 303. SEPARATE APPLICATION OF FOREIGN TAX CRED-**
21 **IT LIMITATION, ETC., TO ITEMS RESOURCED**
22 **UNDER TREATIES.**

23 (a) IN GENERAL.—Subsection (d) of section 904 is
24 amended by redesignating paragraph (6) as paragraph (7)

1 and by inserting after paragraph (5) the following new
2 paragraph:

3 “(6) SEPARATE APPLICATION TO ITEMS
4 RESOURCED UNDER TREATIES.—

5 “(A) IN GENERAL.—If—

6 “(i) without regard to any treaty obli-
7 gation of the United States, any item of
8 income would be treated as derived from
9 sources within the United States,

10 “(ii) under a treaty obligation of the
11 United States, such item would be treated
12 as arising from sources outside the United
13 States, and

14 “(iii) the taxpayer chooses the bene-
15 fits of such treaty obligation,

16 subsections (a), (b), and (c) of this section and
17 sections 902, 907, and 960 shall be applied sep-
18 arately with respect to each such item.

19 “(B) COORDINATION WITH OTHER PROVI-
20 SIONS.—This paragraph shall not apply to any
21 item of income to which subsection (h)(10) or
22 section 865(h) applies.

23 “(C) REGULATIONS.—The Secretary may
24 issue such regulations or other guidance as is
25 necessary or appropriate to carry out the pur-

1 poses of this paragraph, including regulations
2 or other guidance which provides that related
3 items of income may be aggregated for pur-
4 poses of this paragraph.”.

5 (b) **EFFECTIVE DATE.**—The amendments made by
6 this section shall apply to taxable years beginning after
7 the date of the enactment of this Act.

8 **SEC. 304. LIMITATION ON THE AMOUNT OF FOREIGN TAXES**
9 **DEEMED PAID WITH RESPECT TO SECTION**
10 **956 INCLUSIONS.**

11 (a) **IN GENERAL.**—Section 960 is amended by adding
12 at the end the following new subsection:

13 “(c) **LIMITATION WITH RESPECT TO SECTION 956**
14 **INCLUSIONS.**—

15 “(1) **IN GENERAL.**—If there is included under
16 section 951(a)(1)(B) in the gross income of a do-
17 mestic corporation any amount attributable to the
18 earnings and profits of a foreign corporation which
19 is a member of a qualified group (as defined in sec-
20 tion 902(b)) with respect to the domestic corpora-
21 tion, the amount of any foreign income taxes deemed
22 to have been paid during the taxable year by such
23 domestic corporation under section 902 by reason of
24 subsection (a) with respect to such inclusion in gross
25 income shall not exceed the amount of the foreign

1 income taxes which would have been deemed to have
2 been paid during the taxable year by such domestic
3 corporation if cash in an amount equal to the
4 amount of such inclusion in gross income were dis-
5 tributed as a series of distributions (determined
6 without regard to any foreign taxes which would be
7 imposed on an actual distribution) through the chain
8 of ownership which begins with such foreign cor-
9 poration and ends with such domestic corporation.

10 “(2) **AUTHORITY TO PREVENT ABUSE.**—The
11 Secretary shall issue such regulations or other guid-
12 ance as is necessary or appropriate to carry out the
13 purposes of this subsection, including regulations or
14 other guidance which prevent the inappropriate use
15 of the foreign corporation’s foreign income taxes not
16 deemed paid by reason of paragraph (1).”.

17 (b) **EFFECTIVE DATE.**—The amendment made by
18 this section shall apply to acquisitions of United States
19 property (as defined in section 956(c) of the Internal Rev-
20 enue Code of 1986) after December 31, 2010.

21 **SEC. 305. SPECIAL RULE WITH RESPECT TO CERTAIN RE-**
22 **DEMPTIONS BY FOREIGN SUBSIDIARIES.**

23 (a) **IN GENERAL.**—Paragraph (5) of section 304(b)
24 is amended by redesignating subparagraph (B) as sub-

1 paragraph (C) and by inserting after subparagraph (A)
2 the following new subparagraph:

3 “(B) SPECIAL RULE IN CASE OF FOREIGN
4 ACQUIRING CORPORATION.—In the case of any
5 acquisition to which subsection (a) applies in
6 which the acquiring corporation is a foreign
7 corporation, no earnings and profits shall be
8 taken into account under paragraph (2)(A)
9 (and subparagraph (A) shall not apply) if more
10 than 50 percent of the dividends arising from
11 such acquisition (determined without regard to
12 this subparagraph) would neither—

13 “(i) be subject to tax under this chap-
14 ter for the taxable year in which the divi-
15 dends arise, nor

16 “(ii) be includible in the earnings and
17 profits of a controlled foreign corporation
18 (as defined in section 957 and without re-
19 gard to section 953(c)).”.

20 (b) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to acquisitions after December 31,
22 2010.

1 **SEC. 306. MODIFICATION OF AFFILIATION RULES FOR PUR-**
2 **POSES OF RULES ALLOCATING INTEREST EX-**
3 **PENSE.**

4 (a) **IN GENERAL.**—Subparagraph (A) of section
5 864(e)(5) is amended by adding at the end the following:
6 “Notwithstanding the preceding sentence, a foreign cor-
7 poration shall be treated as a member of the affiliated
8 group if—

9 “(i) more than 50 percent of the gross
10 income of such foreign corporation for the
11 taxable year is effectively connected with
12 the conduct of a trade or business within
13 the United States, and

14 “(ii) at least 80 percent of either the
15 vote or value of all outstanding stock of
16 such foreign corporation is owned directly
17 or indirectly by members of the affiliated
18 group (determined with regard to this sen-
19 tence).”.

20 (b) **EFFECTIVE DATE.**—The amendment made by
21 this section shall apply to taxable years beginning after
22 the date of the enactment of this Act.

1 **SEC. 307. TERMINATION OF SPECIAL RULES FOR INTEREST**
2 **AND DIVIDENDS RECEIVED FROM PERSONS**
3 **MEETING THE 80-PERCENT FOREIGN BUSI-**
4 **NESS REQUIREMENTS.**

5 (a) IN GENERAL.—Paragraph (1) of section 861(a)
6 is amended by striking subparagraph (A) and by redesignig-
7 nating subparagraphs (B) and (C) as subparagraphs (A)
8 and (B), respectively.

9 (b) GRANDFATHER RULE WITH RESPECT TO WITH-
10 HOLDING ON INTEREST AND DIVIDENDS RECEIVED FROM
11 PERSONS MEETING THE 80-PERCENT FOREIGN BUSI-
12 NESS REQUIREMENTS.—

13 (1) IN GENERAL.—Subparagraph (B) of section
14 871(i)(2) is amended to read as follows:

15 “(B) The active foreign business percent-
16 age of—

17 “(i) any dividend paid by an existing
18 80/20 company, and

19 “(ii) any interest paid by an existing
20 80/20 company.”.

21 (2) DEFINITIONS AND SPECIAL RULES.—Sec-
22 tion 871 is amended by redesignating subsections (l)
23 and (m) as subsections (m) and (n), respectively,
24 and by inserting after subsection (k) the following
25 new subsection:

1 “(1) RULES RELATING TO EXISTING 80/20 COMPA-
2 NIES.—For purposes of this subsection and subsection
3 (i)(2)(B)—

4 “(1) EXISTING 80/20 COMPANY.—

5 “(A) IN GENERAL.—The term ‘existing 80/
6 20 company’ means any corporation if—

7 “(i) such corporation met the 80-per-
8 cent foreign business requirements of sec-
9 tion 861(c)(1) (as in effect before the date
10 of the enactment of this subsection) for
11 such corporation’s last taxable year begin-
12 ning before January 1, 2011,

13 “(ii) such corporation meets the 80-
14 percent foreign business requirements of
15 subparagraph (B) with respect to each tax-
16 able year after the taxable year referred to
17 in clause (i), and

18 “(iii) there has not been an addition
19 of a substantial line of business with re-
20 spect to such corporation after the date of
21 the enactment of this subsection.

22 “(B) FOREIGN BUSINESS REQUIRE-
23 MENTS.—

24 “(i) IN GENERAL.—Except as pro-
25 vided in clause (iv), a corporation meets

1 the 80-percent foreign business require-
2 ments of this subparagraph if it is shown
3 to the satisfaction of the Secretary that at
4 least 80 percent of the gross income from
5 all sources of such corporation for the test-
6 ing period is active foreign business in-
7 come.

8 “(ii) ACTIVE FOREIGN BUSINESS IN-
9 COME.—For purposes of clause (i), the
10 term ‘active foreign business income’
11 means gross income which—

12 “(I) is derived from sources out-
13 side the United States (as determined
14 under this subchapter), and

15 “(II) is attributable to the active
16 conduct of a trade or business in a
17 foreign country or possession of the
18 United States.

19 “(iii) TESTING PERIOD.—For pur-
20 poses of this subsection, the term ‘testing
21 period’ means the 3-year period ending
22 with the close of the taxable year of the
23 corporation preceding the payment (or
24 such part of such period as may be appli-
25 cable). If the corporation has no gross in-

1 come for such 3-year period (or part there-
2 of), the testing period shall be the taxable
3 year in which the payment is made.

4 “(iv) TRANSITION RULE.—In the case
5 of a taxable year for which the testing pe-
6 riod includes 1 or more taxable years be-
7 ginning before January 1, 2011—

8 “(I) a corporation meets the 80-
9 percent foreign business requirements
10 of this subparagraph if and only if the
11 weighted average of—

12 “(aa) the percentage of the
13 corporation’s gross income from
14 all sources that is active foreign
15 business income (as defined in
16 subparagraph (B) of section
17 861(c)(1) (as in effect before the
18 date of the enactment of this
19 subsection)) for the portion of
20 the testing period that includes
21 taxable years beginning before
22 January 1, 2011, and

23 “(bb) the percentage of the
24 corporation’s gross income from
25 all sources that is active foreign

1 business income (as defined in
2 clause (ii) of this subparagraph)
3 for the portion of the testing pe-
4 riod, if any, that includes taxable
5 years beginning on or after Janu-
6 ary 1, 2011,

7 is at least 80 percent, and

8 “(II) the active foreign business
9 percentage for such taxable year shall
10 equal the weighted average percentage
11 determined under subclause (I).

12 “(2) ACTIVE FOREIGN BUSINESS PERCENT-
13 AGE.—Except as provided in paragraph (1)(B)(iv),
14 the term ‘active foreign business percentage’ means,
15 with respect to any existing 80/20 company, the per-
16 centage which—

17 “(A) the active foreign business income of
18 such company for the testing period, is of

19 “(B) the gross income of such company for
20 the testing period from all sources.

21 “(3) AGGREGATION RULES.—For purposes of
22 applying paragraph (1) (other than subparagraphs
23 (A)(i) and (B)(iv) thereof) and paragraph (2)—

24 “(A) IN GENERAL.—The corporation re-
25 ferred to in paragraph (1)(A) and all of such

1 corporation's subsidiaries shall be treated as
2 one corporation.

3 “(B) SUBSIDIARIES.—For purposes of sub-
4 paragraph (A), the term ‘subsidiary’ means any
5 corporation in which the corporation referred to
6 in subparagraph (A) owns (directly or indi-
7 rectly) stock meeting the requirements of sec-
8 tion 1504(a)(2) (determined by substituting ‘50
9 percent’ for ‘80 percent’ each place it appears
10 and without regard to section 1504(b)(3)).

11 “(4) REGULATIONS.—The Secretary may issue
12 such regulations or other guidance as is necessary or
13 appropriate to carry out the purposes of this section,
14 including regulations or other guidance which pro-
15 vide for the proper application of the aggregation
16 rules described in paragraph (3).”.

17 (c) CONFORMING AMENDMENTS.—

18 (1) Section 861 is amended by striking sub-
19 section (c) and by redesignating subsections (d), (e),
20 and (f) as subsections (c), (d), and (e), respectively.

21 (2) Paragraph (9) of section 904(h) is amended
22 to read as follows:

23 “(9) TREATMENT OF CERTAIN DOMESTIC COR-
24 PORATIONS.—In the case of any dividend treated as
25 not from sources within the United States under

1 section 861(a)(2)(A), the corporation paying such
2 dividend shall be treated for purposes of this sub-
3 section as a United States-owned foreign corpora-
4 tion.”.

5 (3) Subsection (c) of section 2104 is amended
6 in the last sentence by striking “or to a debt obliga-
7 tion of a domestic corporation” and all that follows
8 and inserting a period.

9 (d) EFFECTIVE DATE.—

10 (1) IN GENERAL.—Except as provided in para-
11 graph (2), the amendments made by this section
12 shall apply to taxable years beginning after Decem-
13 ber 31, 2010.

14 (2) GRANDFATHER RULE FOR OUTSTANDING
15 DEBT OBLIGATIONS.—

16 (A) IN GENERAL.—The amendments made
17 by this section shall not apply to payments of
18 interest on obligations issued before the date of
19 the enactment of this Act.

20 (B) EXCEPTION FOR RELATED PARTY
21 DEBT.—Subparagraph (A) shall not apply to
22 any interest which is payable to a related per-
23 son (determined under rules similar to the rules
24 of section 954(d)(3)).

1 (C) SIGNIFICANT MODIFICATIONS TREAT-
2 ED AS NEW ISSUES.—For purposes of subpara-
3 graph (A), a significant modification of the
4 terms of any obligation (including any extension
5 of the term of such obligation) shall be treated
6 as a new issue.

7 **SEC. 308. SOURCE RULES FOR INCOME ON GUARANTEES.**

8 (a) AMOUNTS SOURCED WITHIN THE UNITED
9 STATES.—Subsection (a) of section 861 is amended by
10 adding at the end the following new paragraph:

11 “(9) GUARANTEES.—Amounts received, directly
12 or indirectly, from—

13 “(A) a noncorporate resident or domestic
14 corporation for the provision of a guarantee of
15 any indebtedness of such resident or corpora-
16 tion, or

17 “(B) any foreign person for the provision
18 of a guarantee of any indebtedness of such per-
19 son, if such amount is connected with income
20 which is effectively connected (or treated as ef-
21 fectively connected) with the conduct of a trade
22 or business in the United States.”.

23 (b) AMOUNTS SOURCED WITHOUT THE UNITED
24 STATES.—Subsection (a) of section 862 is amended by
25 striking “and” at the end of paragraph (7), by striking

1 the period at the end of paragraph (8) and inserting “;
2 and”, and by adding at the end the following new para-
3 graph:

4 “(9) amounts received, directly or indirectly,
5 from a foreign person for the provision of a guar-
6 antee of indebtedness of such person other than
7 amounts which are derived from sources within the
8 United States as provided in section 861(a)(9).”.

9 (c) CONFORMING AMENDMENT.—Clause (ii) of sec-
10 tion 864(c)(4)(B) is amended by striking “dividends or in-
11 terest” and inserting “dividends, interest, or amounts re-
12 ceived for the provision of guarantees of indebtedness”.

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to guarantees issued after the date
15 of the enactment of this Act.

16 **SEC. 309. LIMITATION ON EXTENSION OF STATUTE OF LIM-**
17 **TATIONS FOR FAILURE TO NOTIFY SEC-**
18 **RETARY OF CERTAIN FOREIGN TRANSFERS.**

19 (a) IN GENERAL.—Paragraph (8) of section 6501(c)
20 is amended—

21 (1) by striking “In the case of any information”
22 and inserting the following:

23 “(A) IN GENERAL.—In the case of any in-
24 formation”; and

25 (2) by adding at the end the following:

1 “(B) APPLICATION TO FAILURES DUE TO
2 REASONABLE CAUSE.—If the failure to furnish
3 the information referred to in subparagraph (A)
4 is due to reasonable cause and not willful ne-
5 glect, subparagraph (A) shall apply only to the
6 item or items related to such failure.”.

7 (b) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect as if included in section 513
9 of the Hiring Incentives to Restore Employment Act.

10 **TITLE IV—BUDGETARY** 11 **PROVISIONS**

12 **SEC. 401. PAYGO COMPLIANCE.**

13 The budgetary effects of this Act, for the purpose of
14 complying with the Statutory Pay-As-You-Go-Act of 2010,
15 shall be determined by reference to the latest statement
16 titled “Budgetary Effects of PAYGO Legislation” for this
17 Act, submitted for printing in the Congressional Record
18 by the Chairman of the House Budget Committee, pro-
19 vided that such statement has been submitted prior to the
20 vote on passage.

21 **SEC. 402. TIME FOR PAYMENT OF CORPORATE ESTIMATED** 22 **TAXES.**

23 The percentage under paragraph (2) of section 561
24 of the Hiring Incentives to Restore Employment Act in

- 1 effect on the date of the enactment of this Act is increased
- 2 by 3 percentage points.

○