

## Calendar No. 578

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION**S. 3816**

To amend the Internal Revenue Code of 1986 to create American jobs  
and to prevent the offshoring of such jobs overseas.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 2010

Mr. DURBIN (for himself, Mr. REID, Mr. SCHUMER, Mr. DORGAN, Mrs.  
BOXER, Mr. BROWN of Ohio, and Mr. LEAHY) introduced the following  
bill; which was read the first time

SEPTEMBER 22, 2010

Read the second time and placed on the calendar

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**A BILL**

To amend the Internal Revenue Code of 1986 to create  
American jobs and to prevent the offshoring of such  
jobs overseas.

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 “Creating American  
5 Jobs and Ending Offshoring Act”.

1           **TITLE I—INCENTIVES TO**  
2           **CREATE AMERICAN JOBS**

3   **SEC. 101. PAYROLL TAX HOLIDAY FOR EMPLOYERS MOVING**  
4                   **JOBS TO THE UNITED STATES FROM OVER-**  
5                   **SEAS.**

6           (a) IN GENERAL.—Section 3111 of the Internal Rev-  
7   enue Code of 1986 is amended by adding at the end the  
8   following new subsection:

9           “(e) SPECIAL EXEMPTION FOR CERTAIN INDIVID-  
10   UALS HIRED TO REPLACE EMPLOYEES WHOSE JOBS  
11   WERE OVERSEAS.—

12           “(1) IN GENERAL.—Subsection (a) shall not  
13   apply to wages paid by a qualified employer with re-  
14   spect to employment during the applicable 24-month  
15   period with respect to any qualified replacement in-  
16   dividual for services performed—

17           “(A) in a trade or business of such quali-  
18   fied employer, or

19           “(B) in the case of a qualified employer ex-  
20   empt from tax under section 501(a), in further-  
21   ance of the activities related to the purpose or  
22   function constituting the basis of the employer’s  
23   exemption under section 501.

1           “(2) QUALIFIED EMPLOYER.—For purposes of  
2 this subsection, the term ‘qualified employer’ has the  
3 meaning given such term by subsection (d)(2).

4           “(3) QUALIFIED REPLACEMENT INDIVIDUAL.—  
5 For purposes of this subsection—

6           “(A) IN GENERAL.—The term ‘qualified  
7 replacement individual’ means any individual—

8           “(i) who begins employment with a  
9 qualified employer after September 21,  
10 2010, and before September 22, 2013,

11           “(ii) with respect to whom the quali-  
12 fied employer certifies that such individual  
13 has been employed by the qualified em-  
14 ployer to replace another employee—

15           “(I) who was not a citizen or  
16 lawfully present resident of the United  
17 States, and

18           “(II) substantially all of whose  
19 services for the employer were per-  
20 formed outside of the United States,

21           “(iii) with respect to whom the quali-  
22 fied employer certifies that substantially all  
23 of the services the individual will perform  
24 for the employer will be performed within  
25 the United States, and

1           “(iv) who is not an individual de-  
2           scribed in section 51(i)(1) (applied by sub-  
3           stituting qualified employer for taxpayer  
4           each place it appears).

5           For purposes of this paragraph, only 1 indi-  
6           vidual may be treated as a qualified replace-  
7           ment individual with respect to any employee  
8           described in clause (ii) being replaced by the  
9           qualified employer. Any certification under  
10          clause (ii) or (iii) shall be made by signed affi-  
11          davit, under penalties of perjury.

12          “(B) EMPLOYER.—All employers treated  
13          as a single employer under subsection (a) or (b)  
14          of section 52 shall be treated as a single em-  
15          ployer for purposes of subparagraph (A)(ii), ex-  
16          cept that section 1563(b)(2)(C) shall be dis-  
17          regarded in applying section 1563 for purposes  
18          of such section.

19          “(4) APPLICABLE 24-MONTH PERIOD.—For  
20          purposes of this subsection, the term ‘applicable 24-  
21          month period’ means, with respect to any qualified  
22          replacement individual of a qualified employer, the  
23          24-month period beginning on the hiring date of  
24          such individual by the employer.

1           “(5) ELECTION.—A qualified employer may  
2 elect to have this subsection not apply. Such election  
3 shall be made in such manner as the Secretary may  
4 require.

5           “(6) SPECIAL RULE FOR THIRD CALENDAR  
6 QUARTER OF 2010.—

7           “(A) NONAPPLICATION OF EXEMPTION  
8 DURING THIRD QUARTER.—Paragraph (1) shall  
9 not apply with respect to wages paid during the  
10 third calendar quarter of 2010.

11           “(B) CREDITING OF FIRST QUARTER EX-  
12 EMPTION DURING FOURTH QUARTER.—The  
13 amount by which the tax imposed under sub-  
14 section (a) would (but for subparagraph (A))  
15 have been reduced with respect to wages paid  
16 by a qualified employer during the third cal-  
17 endar quarter of 2010 shall be treated as a  
18 payment against the tax imposed under sub-  
19 section (a) with respect to the qualified em-  
20 ployer for the fourth calendar quarter of 2010  
21 which is made on the date that such tax is due.

22           “(7) REGULATIONS.—The Secretary shall pre-  
23 scribe such regulations as may be necessary to carry  
24 out the purposes of this subsection, including regula-  
25 tions necessary to prevent the avoidance of such pur-

1 poses through the transfer and retransfer of employ-  
2 ees within and without the United States or other-  
3 wise.”.

4 (b) COORDINATION WITH WORK OPPORTUNITY  
5 CREDIT.—Section 51(c) of the Internal Revenue Code of  
6 1986 is amended by adding at the end the following new  
7 paragraph:

8 “(6) COORDINATION WITH PAYROLL TAX FOR-  
9 GIVENESS OF QUALIFIED REPLACEMENT INDIVID-  
10 UALS.—The term ‘wages’ shall not include any  
11 amount paid or incurred to a qualified replacement  
12 individual (as defined in section 3111(e)(3)) during  
13 the 2-year period beginning on the hiring date of  
14 such individual by an employer unless such employer  
15 makes an election not to have section 3111(e)  
16 apply.”.

17 (c) TRANSFERS TO FEDERAL OLD-AGE AND SUR-  
18 VIVORS INSURANCE TRUST FUND.—There are hereby ap-  
19 propriated to the Federal Old-Age and Survivors Trust  
20 Fund and the Federal Disability Insurance Trust Fund  
21 established under section 201 of the Social Security Act  
22 (42 U.S.C. 401) amounts equal to the reduction in reve-  
23 nues to the Treasury by reason of the amendments made  
24 by subsection (a). Amounts appropriated by the preceding  
25 sentence shall be transferred from the general fund at

1 such times and in such manner as to replicate to the ex-  
 2 tent possible the transfers which would have occurred to  
 3 such Trust Fund had such amendments not been enacted.

4 (d) EFFECTIVE DATE.—The amendments made by  
 5 this section shall apply to wages paid after September 21,  
 6 2010.

7 **TITLE II—DISINCENTIVES TO**  
 8 **MOVING AMERICAN JOBS**  
 9 **OVERSEAS**

10 **SEC. 201. DISALLOWANCE OF DEDUCTION, LOSS, OR CRED-**  
 11 **IT FOR CERTAIN ITEMS INCURRED IN MOV-**  
 12 **ING AMERICAN JOBS OFFSHORE.**

13 (a) IN GENERAL.—Part IX of subchapter B of chap-  
 14 ter 1 of the Internal Revenue Code of 1986 is amended  
 15 by adding at the end the following new section:

16 **“SEC. 280I. EXPENDITURES INCURRED IN MOVING AMER-**  
 17 **ICAN JOBS OFFSHORE.**

18 “(a) DISALLOWANCE.—No deduction, loss, or credit  
 19 shall be allowed under this title for any taxable year for  
 20 any disallowed amount.

21 “(b) DISALLOWED AMOUNT.—For purposes of this  
 22 section—

23 “(1) IN GENERAL.—The term ‘disallowed  
 24 amount’ means any amount which is paid or in-

1       curred during the taxable year which is properly al-  
2       locable to an American jobs offshoring transaction.

3           “(2) LOSSES.—Such term shall include any loss  
4       from any sale, exchange, abandonment, or other dis-  
5       position of property in connection with an American  
6       jobs offshoring transaction.

7           “(3) EXCEPTION FOR COSTS RELATED TO DIS-  
8       PLACED WORKERS.—Such term shall not include any  
9       amount paid or incurred for assistance to employees  
10      within the United States whose jobs are being lost  
11      as part of an American jobs offshoring transaction,  
12      including any severance pay, outplacement services,  
13      or employee retraining.

14          “(c) AMERICAN JOBS OFFSHORING TRANSACTION.—  
15      For purposes of this section—

16           “(1) IN GENERAL.—The term ‘American jobs  
17      offshoring transaction’ means any transaction (or se-  
18      ries of transactions) in which the taxpayer reduces  
19      or eliminates the operation of a trade or business (or  
20      line of business) within the United States in connec-  
21      tion with the start up or expansion of such trade or  
22      business (or such line of business) by the taxpayer  
23      outside of the United States.

24           “(2) EXCEPTION.—A transaction (or series of  
25      transactions) shall not be treated as an American

1 jobs offshoring transaction if the taxpayer estab-  
2 lishes to the satisfaction of the Secretary that such  
3 transaction (or series of transactions) will not result  
4 in the loss of employment for employees of the tax-  
5 payer within the United States.

6 “(d) AGGREGATION RULE.—All employers treated as  
7 a single employer under subsection (a) or (b) of section  
8 52 shall be treated as a single taxpayer for purposes of  
9 this section, except that section 1563(b)(2)(C) shall be  
10 disregarded in applying section 1563 for purposes of sec-  
11 tion 52.

12 “(e) REGULATIONS.—The Secretary shall prescribe  
13 such regulations as may be necessary to carry out the pur-  
14 poses of this section, including regulations necessary to  
15 prevent the avoidance of such purposes and the application  
16 of this section in the case of mergers, acquisitions, and  
17 dispositions and in the case of contract employees.”.

18 (b) CONFORMING AMENDMENT.—The table of sec-  
19 tions for part IX of subchapter B of chapter 1 of the In-  
20 ternal Revenue Code of 1986 is amended by adding at the  
21 end the following new item:

“Sec. 280I. Expenditures incurred in moving American jobs offshore.”.

22 (c) EFFECTIVE DATES.—

23 (1) IN GENERAL.—The amendments made by  
24 this section shall apply to transactions occurring  
25 after the date of the enactment of this Act.

1           (2) EXCEPTION FOR EXISTING TRANS-  
 2           ACTIONS.—The amendments made by this section  
 3           shall not apply to transactions occurring after the  
 4           date of the enactment of this Act if the taxpayer es-  
 5           tablishes to the satisfaction of the Secretary of the  
 6           Treasury or the Secretary’s delegate that on or be-  
 7           fore such date the taxpayer publicly identified the  
 8           transaction in sufficient detail that the nature and  
 9           scope of the transaction could be identified.

10 **SEC. 202. TAXATION OF INCOME OF CONTROLLED FOREIGN**  
 11                           **CORPORATIONS ATTRIBUTABLE TO IM-**  
 12                           **PORTED PROPERTY PRODUCED BY EMPLOY-**  
 13                           **EES IN AMERICAN JOBS MOVED OFFSHORE.**

14           (a) GENERAL RULE.—Subsection (a) of section 954  
 15           of the Internal Revenue Code of 1986 (defining foreign  
 16           base company income) is amended by striking the period  
 17           at the end of paragraph (5) and inserting “, and”, by re-  
 18           designating paragraph (5) as paragraph (4), and by add-  
 19           ing at the end the following new paragraph:

20                           “(5) imported property offshored income for the  
 21           taxable year (determined under subsection (j) and  
 22           reduced as provided in subsection (b)(5)).”.

23           (b) DEFINITION OF IMPORTED PROPERTY  
 24           OFFSHORED INCOME.—Section 954 of the Internal Rev-

1 enue Code of 1986 is amended by adding at the end the  
2 following new subsection:

3 “(j) IMPORTED PROPERTY OFFSHORED INCOME.—

4 “(1) IN GENERAL.—For purposes of subsection  
5 (a)(5), the term ‘imported property offshored in-  
6 come’ means offshored income (whether in the form  
7 of profits, commissions, fees, or otherwise) received  
8 from a controlled foreign corporation and derived in  
9 connection with—

10 “(A) manufacturing, producing, growing,  
11 or extracting imported property;

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

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

16 Such term shall not include any foreign oil and gas  
17 extraction income (within the meaning of section  
18 907(c)) or any foreign oil related income (within the  
19 meaning of section 907(c)).

20 “(2) IMPORTED PROPERTY.—For purposes of  
21 this subsection—

22 “(A) IN GENERAL.—Except as otherwise  
23 provided in this paragraph, the term ‘imported  
24 property’ means property which is imported

1 into the United States by the offshored con-  
2 trolled foreign corporation or a related person.

3 “(B) IMPORTED PROPERTY INCLUDES CER-  
4 TAIN PROPERTY IMPORTED BY UNRELATED  
5 PERSONS.—The term ‘imported property’ in-  
6 cludes any property imported into the United  
7 States by an unrelated person if, when such  
8 property was sold to the unrelated person by  
9 the controlled foreign corporation (or a related  
10 person), it was reasonable to expect that—

11 “(i) such property would be imported  
12 into the United States; or

13 “(ii) such property would be used as  
14 a component in other property which would  
15 be imported into the United States.

16 “(C) EXCEPTION FOR PROPERTY SUBSE-  
17 QUENTLY EXPORTED.—The term ‘imported  
18 property’ does not include any property which is  
19 imported into the United States and which—

20 “(i) before substantial use in the  
21 United States, is sold, leased, or rented by  
22 the controlled foreign corporation or a re-  
23 lated person for direct use, consumption,  
24 or disposition outside the United States; or

1           “(ii) is used by the offshored con-  
2           trolled foreign corporation or a related per-  
3           son as a component in other property  
4           which is so sold, leased, or rented.

5           “(D) EXCEPTION FOR CERTAIN AGRICUL-  
6           TURAL COMMODITIES.—The term ‘imported  
7           property’ does not include any agricultural com-  
8           modity which is not grown in the United States  
9           in commercially marketable quantities.

10          “(3) OFFSHORED INCOME.—For purposes of  
11          this section, the term ‘offshored income’ means in-  
12          come described in paragraph (1) that is directly or  
13          indirectly derived from the operation of a trade or  
14          business (or line of business) which was started or  
15          expanded outside the United States as part of an  
16          American jobs offshoring transaction (as defined in  
17          section 280I(c)) to which the provisions of section  
18          280I apply.

19          “(4) 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  
19 OFFSHORED INCOME.—

20           (1) IN GENERAL.—Paragraph (1) of section  
21 904(d) of the Internal Revenue Code of 1986 (relat-  
22 ing to separate application of section with respect to  
23 certain categories of income) is amended by striking  
24 “and” at the end of subparagraph (A), by redesign-  
25 ating subparagraph (B) as subparagraph (C), and

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

3 “(B) imported property offshored income,  
4 and”.

5 (2) IMPORTED PROPERTY OFFSHORED INCOME  
6 DEFINED.—Paragraph (2) of section 904(d) of such  
7 Code is amended by redesignating subparagraphs  
8 (I), (J), and (K) as subparagraphs (J), (K), and  
9 (L), respectively, and by inserting after subpara-  
10 graph (H) the following new subparagraph:

11 “(I) IMPORTED PROPERTY OFFSHORED IN-  
12 COME.—The term ‘imported property offshored  
13 income’ means any income received or accrued  
14 by any person which is of a kind which would  
15 be imported property offshored income (as de-  
16 fined in section 954(j)).”.

17 (3) CONFORMING AMENDMENT.—Clause (ii) of  
18 section 904(d)(2)(A) of such Code is amended by in-  
19 serting “or imported property offshored income”  
20 after “passive category income”.

21 (d) TECHNICAL AMENDMENTS.—

22 (1) Clause (iii) of section 952(c)(1)(B) of the  
23 Internal Revenue Code of 1986 (relating to certain  
24 prior year deficits may be taken into account) is  
25 amended—

1 (A) by redesignating subclauses (II), (III),  
2 (IV), and (V) as subclauses (III), (IV), (V), and  
3 (VI), and

4 (B) by inserting after subclause (I) the fol-  
5 lowing new subclause:

6 “(II) imported property offshored  
7 income.”.

8 (2) The last sentence of paragraph (4) of sec-  
9 tion 954(b) of such Code (relating to exception for  
10 certain income subject to high foreign taxes) is  
11 amended by striking “subsection (a)(5)” and insert-  
12 ing “subsection (a)(4)”.

13 (3) Paragraph (5) of section 954(b) of such  
14 Code (relating to deductions to be taken into ac-  
15 count) is amended by striking “and the foreign base  
16 company oil related income” and inserting “the for-  
17 eign base company oil related income, and the im-  
18 ported property offshored income”.

19 (e) EFFECTIVE DATE.—The amendments made by  
20 this section shall apply to taxable years of foreign corpora-  
21 tions beginning after the date of the enactment of this  
22 Act, and to taxable years of United States shareholders  
23 within which or with which such taxable years of such for-  
24 eign corporations end.



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