

112TH CONGRESS  
1ST SESSION

# S. 1671

To amend the Internal Revenue Code of 1986 to allow a temporary dividends received deduction for dividends received from a controlled foreign corporation.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 6, 2011

Mrs. HAGAN (for herself, Mr. MCCAIN, Mrs. BOXER, Mr. BLUNT, Mr. GRAHAM, Mr. ISAKSON, Ms. MURKOWSKI, Mr. BROWN of Massachusetts, and Mr. MANCHIN) 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 allow a temporary dividends received deduction for dividends received from a controlled foreign corporation.

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 “Foreign Earnings Re-  
5 investment Act”.

1 **SEC. 2. ALLOWANCE OF TEMPORARY DIVIDENDS RECEIVED**  
 2 **DEDUCTION FOR DIVIDENDS RECEIVED**  
 3 **FROM A CONTROLLED FOREIGN CORPORA-**  
 4 **TION.**

5 (a) APPLICABILITY OF PROVISION.—

6 (1) IN GENERAL.—Subsection (f) of section 965  
 7 is amended to read as follows:

8 “(f) ELECTION; ELECTION YEAR.—

9 “(1) IN GENERAL.—The taxpayer may elect to  
 10 apply this section to—

11 “(A) the taxpayer’s last taxable year which  
 12 begins before the date of the enactment of the  
 13 Foreign Earnings Reinvestment Act, or

14 “(B) the taxpayer’s first taxable year  
 15 which begins during the 1-year period beginning  
 16 on such date.

17 Such election may be made for a taxable year only  
 18 if made on or before the due date (including exten-  
 19 sions) for filing the return of tax for such taxable  
 20 year.

21 “(C) ELECTION YEAR.—For purposes of  
 22 this section, the term ‘election year’ means the  
 23 taxable year—

24 “(i) which begins after the date that  
 25 is one year before the date of the enact-

1           ment of the Foreign Earnings Reinvest-  
2           ment Act, and

3           “(ii) to which the taxpayer elects  
4           under paragraph (1) to apply this sec-  
5           tion.”.

6           (2) CONFORMING AMENDMENTS.—

7           (A) EXTRAORDINARY DIVIDENDS.—Section  
8           965(b)(2) of such Code is amended—

9           (i) by striking “June 30, 2003” and  
10          inserting “September 30, 2011”, and

11          (ii) by adding at the end the following  
12          new sentence: “The amounts described in  
13          clauses (i), (ii), and (iii) shall not include  
14          any amounts which were taken into ac-  
15          count in determining the deduction under  
16          subsection (a) for any prior taxable year.”.

17          (B) DETERMINATIONS RELATING TO RE-  
18          LATED PARTY INDEBTEDNESS.—Section  
19          965(b)(3)(B) of such Code is amended by strik-  
20          ing “October 3, 2004” and inserting “Sep-  
21          tember 30, 2011”.

22          (C) DETERMINATIONS RELATING TO BASE  
23          PERIOD.—Section 965(c)(2) of such Code is  
24          amended by striking “June 30, 2003” and in-  
25          serting “September 30, 2011”.

1 (b) DEDUCTION INCLUDES CURRENT AND ACCUMU-  
2 LATED FOREIGN EARNINGS.—

3 (1) IN GENERAL.—Paragraph (1) of section  
4 965(b) of the Internal Revenue Code of 1986 is  
5 amended to read as follows:

6 “(1) IN GENERAL.—The amount of dividends  
7 taken into account under subsection (a) shall not ex-  
8 ceed the sum of the current and accumulated earn-  
9 ings and profits described in section 959(c)(3) for  
10 the year a deduction is claimed under subsection (a),  
11 without diminution by reason of any distributions  
12 made during the election year, for all controlled for-  
13 eign corporations of the United States shareholder.”.

14 (2) CONFORMING AMENDMENTS.—

15 (A) Section 965(c) of such Code, as  
16 amended by subsection (a), is amended by  
17 striking paragraph (1) and by redesignating  
18 paragraphs (2), (3), (4), and (5), as paragraphs  
19 (1), (2), (3), and (4), respectively.

20 (B) Paragraph (4) of section 965(c) of  
21 such Code, as redesignated by subparagraph  
22 (A), is amended to read as follows:

23 “(4) CONTROLLED GROUPS.—All United States  
24 shareholders which are members of an affiliated  
25 group filing a consolidated return under section

1 1501 shall be treated as one United States share-  
2 holder.”.

3 (c) AMOUNT OF DEDUCTION.—

4 (1) IN GENERAL.—Paragraph (1) of section  
5 965(a) of the Internal Revenue Code of 1986 is  
6 amended by striking “85 percent” and inserting “75  
7 percent”.

8 (2) BONUS DEDUCTION IN SUBSEQUENT TAX-  
9 ABLE YEAR FOR INCREASING JOBS.—Section 965 of  
10 such Code is amended by adding at the end the fol-  
11 lowing new subsection:

12 “(g) BONUS DEDUCTION.—

13 “(1) IN GENERAL.—In the case of any taxpayer  
14 who makes an election to apply this section, there  
15 shall be allowed as a deduction for the first taxable  
16 year following the election year an amount equal to  
17 the applicable percentage of the cash dividends  
18 which are taken into account under subsection (a)  
19 with respect to such taxpayer for the election year.

20 “(2) APPLICABLE PERCENTAGE.—For purposes  
21 of paragraph (1), the applicable percentage is the  
22 amount which bears the same ratio (not greater  
23 than 1) to 10 percent as—

24 “(A) the excess (if any) of—

1           “(i) the qualified payroll of the tax-  
 2           payer for the calendar year which begins  
 3           with or within the first taxable year fol-  
 4           lowing the election year, over

5           “(ii) the qualified payroll of the tax-  
 6           payer for calendar year 2010, bears to

7           “(B) 10 percent of the qualified payroll of  
 8           the taxpayer for calendar year 2010.”

9           “(3) QUALIFIED PAYROLL.—For purposes of  
 10          this paragraph:

11           “(A) IN GENERAL.—The term ‘qualified  
 12           payroll’ means, with respect to a taxpayer for  
 13           any calendar year, the aggregate wages (as de-  
 14           fined in section 3121(a)) paid by the corpora-  
 15           tion during such calendar year.

16           “(B) EXCEPTION FOR CHANGES IN OWN-  
 17           ERSHIP OF TRADES OR BUSINESSES.—

18           “(i) ACQUISITIONS.—If, after Decem-  
 19           ber 31, 2009, and before the close of the  
 20           first taxable year following the election  
 21           year, a taxpayer acquires the trade or busi-  
 22           ness of a predecessor, then the qualified  
 23           payroll of such taxpayer for any calendar  
 24           year shall be increased by so much of the  
 25           qualified payroll of the predecessor for

1 such calendar year as was attributable to  
2 the trade or business acquired by the tax-  
3 payer.

4 “(ii) DISPOSITIONS.—If, after Decem-  
5 ber 31, 2009, and before the close of the  
6 first taxable year following the election  
7 year, a taxpayer disposes of a trade or  
8 business, then—

9 “(I) the qualified payroll of such  
10 taxpayer for calendar year 2010 shall  
11 be decreased by the amount of wages  
12 for such calendar year as were attrib-  
13 utable to the trade or business which  
14 was disposed of by the taxpayer, and

15 “(II) if the disposition occurs  
16 after the beginning of the first taxable  
17 year following the election year, the  
18 qualified payroll of such taxpayer for  
19 the calendar year which begins with  
20 or within such taxable year shall be  
21 decreased by the amount of wages for  
22 such calendar year as were attrib-  
23 utable to the trade or business which  
24 was disposed of by the taxpayer.

1           “(C) SPECIAL RULE.—For purposes of de-  
2           termining qualified payroll for any calendar  
3           year after calendar year 2011, such term shall  
4           not include wages paid to any individual if such  
5           individual received compensation from the tax-  
6           payer for services performed—

7                   “(i) after the date of the enactment of  
8                   this paragraph, and

9                   “(ii) at a time when such individual  
10                  was not an employee of the taxpayer.”.

11           (3) REDUCTION FOR FAILURE TO MAINTAIN  
12           EMPLOYMENT LEVELS.—Paragraph (4) of section  
13           965(b) of such Code (relating to limitations) is  
14           amended to read as follows:

15                   “(4) REDUCTION IN BENEFITS FOR FAILURE  
16           TO MAINTAIN EMPLOYMENT LEVELS.—

17                   “(A) IN GENERAL.—If, during the period  
18                   consisting of the calendar month in which the  
19                   taxpayer first receives a distribution described  
20                   in subsection (a)(1) and the succeeding 23 cal-  
21                   endar months, the taxpayer does not maintain  
22                   an average employment level at least equal to  
23                   the taxpayer’s prior average employment, an  
24                   additional amount equal to \$75,000 multiplied  
25                   by the number of employees by which the tax-



1 payer’s average employment level during such  
2 period falls below the prior average employment  
3 (but not exceeding the aggregate amount al-  
4 lowed as a deduction pursuant to subsection  
5 (a)(1)) shall be taken into income by the tax-  
6 payer during the taxable year that includes the  
7 final day of such period.

8 “(B) AVERAGE EMPLOYMENT LEVEL.—  
9 For purposes of this paragraph, the taxpayer’s  
10 average employment level for a period shall be  
11 the average number of full-time United States  
12 employees of the taxpayer, measured at the end  
13 of each month during the period.

14 “(C) PRIOR AVERAGE EMPLOYMENT.—For  
15 purposes of this paragraph, the taxpayer’s  
16 ‘prior average employment’ shall be the average  
17 number of full-time United States employees of  
18 the taxpayer during the period consisting of the  
19 24 calendar months immediately preceding the  
20 calendar month in which the taxpayer first re-  
21 ceives a distribution described in subsection  
22 (a)(1).

23 “(D) FULL-TIME UNITED STATES EM-  
24 PLOYEE.—For purposes of this paragraph—

1           “(i) IN GENERAL.—The term ‘full-  
2           time United States employee’ means an in-  
3           dividual who provides services in the  
4           United States as a full-time employee,  
5           based on the employer’s standards and  
6           practices; except that regardless of the em-  
7           ployer’s classification of the employee, an  
8           employee whose normal schedule is 40  
9           hours or more per week is considered a  
10          full-time employee.

11          “(ii) EXCEPTION FOR CHANGES IN  
12          OWNERSHIP OF TRADES OR BUSINESSES.—  
13          Such term does not include—

14                 “(I) any individual who was an  
15                 employee, on the date of acquisition,  
16                 of any trade or business acquired by  
17                 the taxpayer during the 24-month pe-  
18                 riod referred to in subparagraph (A),  
19                 and

20                 “(II) any individual who was an  
21                 employee of any trade or business dis-  
22                 posed of by the taxpayer during the  
23                 24-month period referred to in sub-  
24                 paragraph (A) or the 24-month period  
25                 referred to in subparagraph (C).

1           “(E) AGGREGATION RULES.—In deter-  
2           mining the taxpayer’s average employment level  
3           and prior average employment, all domestic  
4           members of a controlled group shall be treated  
5           as a single taxpayer.”.

6           (d) EFFECTIVE DATE.—The amendments made by  
7           this section shall apply to taxable years ending after the  
8           date of the enactment of this Act.

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