

105TH CONGRESS
1ST SESSION

H. R. 1015

To rescind restrictions on welfare and public benefits for legal immigrants enacted by title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, to reduce corporate welfare, to strengthen tax provisions regarding persons who relinquish United States citizenship, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 1997

Mr. GUTIERREZ (for himself, Mr. EVANS, Mr. FILNER, Mr. DELLUMS, Mr. ABERCROMBIE, Mr. SERRANO, Mr. FRANK of Massachusetts, Ms. WATERS, Mr. STARK, Mr. TORRES, Mr. GONZALEZ, Mr. PASTOR, Ms. ROYBAL-ALLARD, Ms. VELÁZQUEZ, Mr. HINOJOSA, Mr. ROMERO-BARCELÓ, Mr. GREEN, Mr. MEEHAN, Mr. WATT of North Carolina, Mr. VENTO, Mr. FORD, Ms. JACKSON-LEE of Texas, Ms. CHRISTIAN-GREEN, Mr. FROST, Mr. SABO, Mr. OBERSTAR, Mr. DAVIS of Illinois, and Mr. BROWN of California) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To rescind restrictions on welfare and public benefits for legal immigrants enacted by title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, to reduce corporate welfare, to strengthen tax provisions regarding persons who relinquish United States citizenship, 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.**

2 This Act may be cited as the “Immigrant Fairness
3 Act of 1997”.

4 **TITLE I—TERMINATION OF PRO-**
5 **VISIONS OF PUBLIC LAW 104–**
6 **193 RESTRICTING WELFARE**
7 **AND PUBLIC BENEFITS FOR**
8 **LEGAL IMMIGRANTS**

9 **SEC 101. TERMINATION OF PROVISIONS OF PUBLIC LAW**
10 **104–193 RESTRICTING WELFARE AND PUBLIC**
11 **BENEFITS FOR LEGAL IMMIGRANTS.**

12 Notwithstanding any other provision of law, on the
13 date of the enactment of this Act, the provisions of title
14 IV of the Personal Responsibility and Work Opportunity
15 Reconciliation Act of 1996 (Public Law 104–193) shall
16 cease to be effective, the amendments made by that title
17 shall be repealed, and any provision of law repealed by
18 that title shall be reenacted.

19 **TITLE II—TAX PROVISIONS**

20 **SECTION 201. REVISION OF TAX RULES ON EXPATRIATION.**

21 (a) IN GENERAL.—Subpart A of part II of sub-
22 chapter N of chapter 1 of the Internal Revenue Code of
23 1986 is amended by inserting after section 877 the follow-
24 ing new section:

1 **“SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.**

2 “(a) GENERAL RULES.—For purposes of this sub-
3 title—

4 “(1) MARK TO MARKET.—Except as provided in
5 subsection (f)(2), all property held by an expatriate
6 immediately before the expatriation date shall be
7 treated as sold at such time for its fair market
8 value.

9 “(2) RECOGNITION OF GAIN OR LOSS.—In the
10 case of any sale under paragraph (1)—

11 “(A) notwithstanding any other provision
12 of this title, any gain arising from such sale
13 shall be taken into account for the taxable year
14 of the sale unless such gain is excluded from
15 gross income under part III of subchapter B,
16 and

17 “(B) any loss arising from such sale shall
18 be taken into account for the taxable year of
19 the sale to the extent otherwise provided by this
20 title, except that section 1091 shall not apply
21 (and section 1092 shall apply) to any such loss.

22 “(3) ELECTION TO CONTINUE TO BE TAXED AS
23 UNITED STATES CITIZEN.—

24 “(A) IN GENERAL.—If an expatriate elects
25 the application of this paragraph with respect
26 to any property—

1 “(i) this section (other than this para-
2 graph) shall not apply to such property,
3 but

4 “(ii) such property shall be subject to
5 tax under this title in the same manner as
6 if the individual were a United States
7 citizen.

8 “(B) LIMITATION ON AMOUNT OF ESTATE,
9 GIFT, AND GENERATION-SKIPPING TRANSFER
10 TAXES.—The aggregate amount of taxes im-
11 posed under subtitle B with respect to any
12 transfer of property by reason of an election
13 under subparagraph (A) shall not exceed the
14 amount of income tax which would be due if the
15 property were sold for its fair market value im-
16 mediately before the time of the transfer or
17 death (taking into account the rules of para-
18 graph (2)).

19 “(C) REQUIREMENTS.—Subparagraph (A)
20 shall not apply to an individual unless the indi-
21 vidual—

22 “(i) provides security for payment of
23 tax in such form and manner, and in such
24 amount, as the Secretary may require,

1 “(ii) consents to the waiver of any
2 right of the individual under any treaty of
3 the United States which would preclude as-
4 sessment or collection of any tax which
5 may be imposed by reason of this para-
6 graph, and

7 “(iii) complies with such other re-
8 quirements as the Secretary may prescribe.

9 “(D) ELECTION.—An election under sub-
10 paragraph (A) shall apply only to the property
11 described in the election and, once made, shall
12 be irrevocable.

13 “(b) EXCLUSION FOR CERTAIN GAIN.—The amount
14 which would (but for this subsection) be includible in the
15 gross income of any individual by reason of subsection (a)
16 shall be reduced (but not below zero) by \$600,000.

17 “(c) PROPERTY TREATED AS HELD.—For purposes
18 of this section, except as otherwise provided by the Sec-
19 retary, an individual shall be treated as holding—

20 “(1) all property which would be includible in
21 his gross estate under chapter 11 if such individual
22 were a citizen or resident of the United States (with-
23 in the meaning of chapter 11) who died at the time
24 the property is treated as sold,

1 “(2) any other interest in a trust which the in-
2 dividual is treated as holding under the rules of sub-
3 section (f)(1), and

4 “(3) any other interest in property specified by
5 the Secretary as necessary or appropriate to carry
6 out the purposes of this section.

7 “(d) EXCEPTIONS.—The following property shall not
8 be treated as sold for purposes of this section:

9 “(1) UNITED STATES REAL PROPERTY INTER-
10 ESTS.—Any United States real property interest (as
11 defined in section 897(c)(1)), other than stock of a
12 United States real property holding corporation
13 which does not, on the expatriation date, meet the
14 requirements of section 897(c)(2).

15 “(2) INTEREST IN CERTAIN RETIREMENT
16 PLANS.—

17 “(A) IN GENERAL.—Any interest in a
18 qualified retirement plan (as defined in section
19 4974(c)), other than any interest attributable to
20 contributions which are in excess of any limita-
21 tion or which violate any condition for tax-
22 favored treatment.

23 “(B) FOREIGN PENSION PLANS.—

24 “(i) IN GENERAL.—Under regulations
25 prescribed by the Secretary, interests in

1 foreign pension plans or similar retirement
2 arrangements or programs.

3 “(ii) LIMITATION.—The value of prop-
4 erty which is treated as not sold by reason
5 of this subparagraph shall not exceed
6 \$500,000.

7 “(e) DEFINITIONS.—For purposes of this section—

8 “(1) EXPATRIATE.—The term ‘expatriate’
9 means—

10 “(A) any United States citizen who relin-
11 quishes his citizenship, or

12 “(B) any long-term resident of the United
13 States who—

14 “(i) ceases to be a lawful permanent
15 resident of the United States (within the
16 meaning of section 7701(b)(6)), or

17 “(ii) commences to be treated as a
18 resident of a foreign country under the
19 provisions of a tax treaty between the
20 United States and the foreign country and
21 who does not waive the benefits of such
22 treaty applicable to residents of the foreign
23 country.

24 An individual shall not be treated as an expatriate
25 for purposes of this section by reason of the individ-

1 ual relinquishing United States citizenship before at-
2 taining the age of 18½ if the individual has been a
3 resident of the United States (as defined in section
4 7701(b)(1)(A)(ii)) for less than 5 taxable years be-
5 fore the date of relinquishment.

6 “(2) EXPATRIATION DATE.—The term ‘expa-
7 triation date’ means—

8 “(A) the date an individual relinquishes
9 United States citizenship, or

10 “(B) in the case of a long-term resident of
11 the United States, the date of the event de-
12 scribed in clause (i) or (ii) of paragraph (1)(B).

13 “(3) RELINQUISHMENT OF CITIZENSHIP.—A
14 citizen shall be treated as relinquishing his United
15 States citizenship on the earliest of—

16 “(A) the date the individual renounces his
17 United States nationality before a diplomatic or
18 consular officer of the United States pursuant
19 to paragraph (5) of section 349(a) of the Immi-
20 gration and Nationality Act (8 U.S.C.
21 1481(a)(5)),

22 “(B) the date the individual furnishes to
23 the United States Department of State a signed
24 statement of voluntary relinquishment of
25 United States nationality confirming the per-

1 formance of an act of expatriation specified in
2 paragraph (1), (2), (3), or (4) of section 349(a)
3 of the Immigration and Nationality Act (8
4 U.S.C. 1481(a) (1)–(4)),

5 “(C) the date the United States Depart-
6 ment of State issues to the individual a certifi-
7 cate of loss of nationality, or

8 “(D) the date a court of the United States
9 cancels a naturalized citizen’s certificate of nat-
10 uralization.

11 Subparagraph (A) or (B) shall not apply to any indi-
12 vidual unless the renunciation or voluntary relin-
13 quishment is subsequently approved by the issuance
14 to the individual of a certificate of loss of nationality
15 by the United States Department of State.

16 “(4) LONG-TERM RESIDENT.—

17 “(A) IN GENERAL.—The term ‘long-term
18 resident’ means any individual (other than a
19 citizen of the United States) who is a lawful
20 permanent resident of the United States in at
21 least 8 taxable years during the period of 15
22 taxable years ending with the taxable year dur-
23 ing which the sale under subsection (a)(1) is
24 treated as occurring. For purposes of the pre-
25 ceding sentence, an individual shall not be

1 treated as a lawful permanent resident for any
 2 taxable year if such individual is treated as a
 3 resident of a foreign country for the taxable
 4 year under the provisions of a tax treaty be-
 5 tween the United States and the foreign coun-
 6 try and does not waive the benefits of such
 7 treaty applicable to residents of the foreign
 8 country.

9 “(B) SPECIAL RULE.—For purposes of
 10 subparagraph (A), there shall not be taken into
 11 account—

12 “(i) any taxable year during which
 13 any prior sale is treated under subsection
 14 (a)(1) as occurring, or

15 “(ii) any taxable year prior to the tax-
 16 able year referred to in clause (i).

17 “(f) SPECIAL RULES APPLICABLE TO BENE-
 18 FICIARIES’ INTERESTS IN TRUST.—

19 “(1) DETERMINATION OF BENEFICIARIES’ IN-
 20 TEREST IN TRUST.—For purposes of this section—

21 “(A) GENERAL RULE.—A beneficiary’s in-
 22 terest in a trust shall be based upon all relevant
 23 facts and circumstances, including the terms of
 24 the trust instrument and any letter of wishes or
 25 similar document, historical patterns of trust

1 distributions, and the existence of and functions
2 performed by a trust protector or any similar
3 adviser.

4 “(B) SPECIAL RULE.—The remaining in-
5 terests in the trust not determined under sub-
6 paragraph (A) to be held by any beneficiary
7 shall be allocated first to the grantor, if a bene-
8 ficiary, and then to other beneficiaries under
9 rules prescribed by the Secretary similar to the
10 rules of intestate succession.

11 “(C) CONSTRUCTIVE OWNERSHIP.—If a
12 beneficiary of a trust is a corporation, partner-
13 ship, trust, or estate, the shareholders, part-
14 ners, or beneficiaries shall be deemed to be the
15 trust beneficiaries for purposes of this section.

16 “(D) TAXPAYER RETURN POSITION.—A
17 taxpayer shall clearly indicate on its income tax
18 return—

19 “(i) the methodology used to deter-
20 mine that taxpayer’s trust interest under
21 this section, and

22 “(ii) if the taxpayer knows (or has
23 reason to know) that any other beneficiary
24 of such trust is using a different methodol-

1 ogy to determine such beneficiary's trust
2 interest under this section.

3 “(2) DEEMED SALE IN CASE OF TRUST INTER-
4 EST.—If an individual who is an expatriate is treat-
5 ed under paragraph (1) as holding an interest in a
6 trust for purposes of this section—

7 “(A) the individual shall not be treated as
8 having sold such interest,

9 “(B) such interest shall be treated as a
10 separate share in the trust, and

11 “(C)(i) such separate share shall be treat-
12 ed as a separate trust consisting of the assets
13 allocable to such share,

14 “(ii) the separate trust shall be treated as
15 having sold its assets immediately before the ex-
16 patriation date for their fair market value and
17 as having distributed all of its assets to the in-
18 dividual as of such time, and

19 “(iii) the individual shall be treated as hav-
20 ing recontributed the assets to the separate
21 trust.

22 Subsection (a)(2) shall apply to any income, gain, or
23 loss of the individual arising from a distribution de-
24 scribed in subparagraph (C)(ii).

1 “(g) TERMINATION OF DEFERRALS, ETC.—On the
2 date any property held by an individual is treated as sold
3 under subsection (a), notwithstanding any other provision
4 of this title—

5 “(1) any period during which recognition of in-
6 come or gain is deferred shall terminate, and

7 “(2) any extension of time for payment of tax
8 shall cease to apply and the unpaid portion of such
9 tax shall be due and payable at the time and in the
10 manner prescribed by the Secretary.

11 “(h) RULES RELATING TO PAYMENT OF TAX.—

12 “(1) IMPOSITION OF TENTATIVE TAX.—

13 “(A) IN GENERAL.—If an individual is re-
14 quired to include any amount in gross income
15 under subsection (a) for any taxable year, there
16 is hereby imposed, immediately before the expa-
17 triation date, a tax in an amount equal to the
18 amount of tax which would be imposed if the
19 taxable year were a short taxable year ending
20 on the expatriation date.

21 “(B) DUE DATE.—The due date for any
22 tax imposed by subparagraph (A) shall be the
23 90th day after the expatriation date.

24 “(C) TREATMENT OF TAX.—Any tax paid
25 under subparagraph (A) shall be treated as a

1 payment of the tax imposed by this chapter for
2 the taxable year to which subsection (a) applies.

3 “(2) DEFERRAL OF TAX.—The payment of any
4 tax attributable to amounts included in gross income
5 under subsection (a) may be deferred to the same
6 extent, and in the same manner, as any tax imposed
7 by chapter 11, except that the Secretary may extend
8 the period for extension of time for paying tax under
9 section 6161 to such number of years as the Sec-
10 retary determines appropriate.

11 “(3) RULES RELATING TO SECURITY INTER-
12 ESTS.—

13 “(A) ADEQUACY OF SECURITY INTER-
14 ESTS.—In determining the adequacy of any se-
15 curity to be provided under this section, the
16 Secretary may take into account the principles
17 of section 2056A.

18 “(B) SPECIAL RULE FOR TRUST.—If a
19 taxpayer is required by this section to provide
20 security in connection with any tax imposed by
21 reason of this section with respect to the hold-
22 ing of an interest in a trust and any trustee of
23 such trust is an individual citizen of the United
24 States or a domestic corporation, such trustee
25 shall be required to provide such security upon

1 notification by the taxpayer of such
2 requirement.

3 “(i) COORDINATION WITH ESTATE AND GIFT
4 TAXES.—If subsection (a) applies to property held by an
5 individual for any taxable year and—

6 “(1) such property is includible in the gross es-
7 tate of such individual solely by reason of section
8 2107, or

9 “(2) section 2501 applies to a transfer of such
10 property by such individual solely by reason of sec-
11 tion 2501(a)(3),

12 then there shall be allowed as a credit against the addi-
13 tional tax imposed by section 2101 or 2501, whichever is
14 applicable, solely by reason of section 2107 or 2501(a)(3)
15 an amount equal to the increase in the tax imposed by
16 this chapter for such taxable year by reason of this
17 section.

18 “(j) REGULATIONS.—The Secretary shall prescribe
19 such regulations as may be necessary or appropriate to
20 carry out the purposes of this section, including regula-
21 tions to prevent double taxation by ensuring that—

22 “(1) appropriate adjustments are made to basis
23 to reflect gain recognized by reason of subsection (a)
24 and the exclusion provided by subsection (b),

1 “(2) no interest in property is treated as held
2 for purposes of this section by more than one tax-
3 payer, and

4 “(3) any gain by reason of a deemed sale under
5 subsection (a) of an interest in a corporation, part-
6 nership, trust, or estate is reduced to reflect that
7 portion of such gain which is attributable to an in-
8 terest in a trust which a shareholder, partner, or
9 beneficiary is treated as holding directly under sub-
10 section (f)(1)(C).

11 “(k) CROSS REFERENCE.—

**“For income tax treatment of individuals who ter-
minate United States citizenship, see section
7701(a)(47).”**

12 (b) DEFINITION OF TERMINATION OF UNITED
13 STATES CITIZENSHIP.—Section 7701(a) of the Internal
14 Revenue Code of 1986 is amended by adding at the end
15 the following new paragraph:

16 “(47) TERMINATION OF UNITED STATES CITI-
17 ZENSHIP.—An individual shall not cease to be treat-
18 ed as a United States citizen before the date on
19 which the individual’s citizenship is treated as relin-
20 quished under section 877A(e)(3).”

21 (c) COORDINATION WITH HEALTH INSURANCE
22 PORTABILITY AND ACCOUNTABILITY ACT OF 1996.—Sec-
23 tion 511 of the Health Insurance Portability and Account-
24 ability Act of 1996, and the amendments made by such

1 section, are hereby repealed and the Internal Revenue
2 Code of 1986 shall be applied as if such section and such
3 amendments had never been enacted.

4 (d) CONFORMING AMENDMENTS.—

5 (1) Section 877 of the Internal Revenue Code
6 of 1986 is amended by adding at the end the follow-
7 ing new subsection:

8 “(f) APPLICATION.—This section shall not apply to
9 any individual who relinquishes (within the meaning of
10 section 877A(e)(3)) United States citizenship on or after
11 February 6, 1995.”

12 (2) Section 2107(c) of such Code is amended by
13 adding at the end the following new paragraph:

14 “(3) CROSS REFERENCE.—For credit against
15 the tax imposed by subsection (a) for expatriation
16 tax, see section 877A(i).”

17 (3) Section 2501(a)(3) of such Code is amended
18 by adding at the end the following new flush
19 sentence:

20 “For credit against the tax imposed under this sec-
21 tion by reason of this paragraph, see section
22 877A(i).”

23 (4) Section 6851 of such Code is amended by
24 striking subsection (d) and by redesignating sub-
25 section (e) as subsection (d).

1 (5) Paragraph (10) of section 7701(b) of such
 2 Code is amended by adding at the end the following
 3 new sentence: “This paragraph shall not apply to
 4 any long-term resident of the United States who is
 5 an expatriate (as defined in section 877A(e)(1)).”

6 (e) CLERICAL AMENDMENT.—The table of sections
 7 for subpart A of part II of subchapter N of chapter 1
 8 of the Internal Revenue Code of 1986 is amended by in-
 9 serting after the item relating to section 877 the following
 10 new item:

“Sec. 877A. Tax responsibilities of expatriation.”

11 (f) EFFECTIVE DATE.—

12 (1) IN GENERAL.—The amendments made by
 13 this section (other than subsection (c)) shall apply to
 14 expatriates (within the meaning of section 877A(e)
 15 of the Internal Revenue Code of 1986, as added by
 16 this section) whose expatriation date (as so defined)
 17 occurs on or after February 6, 1995.

18 (2) DUE DATE FOR TENTATIVE TAX.—The due
 19 date under section 877A(h)(1)(B) of such Code shall
 20 in no event occur before the 90th day after the date
 21 of the enactment of this Act.

22 **SEC. 202. BASIS OF ASSETS OF NONRESIDENT INDIVIDUALS**
 23 **BECOMING CITIZENS OR RESIDENTS.**

24 (a) IN GENERAL.—Part IV of subchapter O of chap-
 25 ter 1 of the Internal Revenue Code of 1986 (relating to

1 special rules for gain or loss on disposition of property)
 2 is amended by redesignating section 1061 as section 1062
 3 and by inserting after section 1060 the following new sec-
 4 tion:

5 **“SEC. 1061. BASIS OF ASSETS OF NONRESIDENT INDIVID-**
 6 **UALS BECOMING CITIZENS OR RESIDENTS.**

7 “(a) GENERAL RULE.—If a nonresident alien individ-
 8 ual becomes a citizen or resident of the United States,
 9 gain or loss on the disposition of any property held on
 10 the date the individual becomes such a citizen or resident
 11 shall be determined by substituting, as of the applicable
 12 date, the fair market value of such property (on the appli-
 13 cable date) for its cost basis.

14 “(b) EXCEPTION FOR DEPRECIATION.—Any deduc-
 15 tion under this chapter for depreciation, depletion, or am-
 16 ortization shall be determined without regard to the appli-
 17 cation of this section.

18 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-
 19 poses of this section—

20 “(1) APPLICABLE DATE.—The term ‘applicable
 21 date’ means, with respect to any property to which
 22 subsection (a) applies, the earlier of—

23 “(A) the date the individual becomes a citi-
 24 zen or resident of the United States, or

1 “(B) the date the property first becomes
2 subject to tax under this subtitle by reason of
3 being used in a United States trade or business
4 or by reason of becoming a United States real
5 property interest (within the meaning of section
6 897(c)(1)).

7 “(2) RESIDENT.—The term ‘resident’ does not
8 include an individual who is treated as a resident of
9 a foreign country under the provisions of a tax treat-
10 ty between the United States and a foreign country
11 and who does not waive the benefits of such treaty
12 applicable to residents of the foreign country.

13 “(3) TRUSTS.—A trust shall not be treated as
14 an individual.

15 “(4) ELECTION NOT TO HAVE SECTION
16 APPLY.—An individual may elect not to have this
17 section apply solely for purposes of determining gain
18 with respect to any property. Such election shall
19 apply only to property specified in the election and,
20 once made, shall be irrevocable.

21 “(5) SECTION ONLY TO APPLY ONCE.—This
22 section shall apply only with respect to the first time
23 the individual becomes either a citizen or resident of
24 the United States.

1 “(d) REGULATIONS.—The Secretary shall prescribe
2 regulations for purposes of this section, including regula-
3 tions—

4 “(1) for application of this section in the case
5 of property which consists of a direct or indirect in-
6 terest in a trust, and

7 “(2) providing look-thru rules in the case of any
8 indirect interest in any United States real property
9 interest (within the meaning of section 897(c)(1)) or
10 property used in a United States trade or business.”

11 (b) CONFORMING AMENDMENT.—The table of sec-
12 tions for part IV of subchapter O of chapter 1 of the Inter-
13 nal Revenue Code of 1986 is amended by striking the item
14 relating to section 1061 and inserting the following new
15 items:

“Sec. 1061. Basis of assets of nonresident individuals becoming
citizens or residents.

“Sec. 1062. Cross references.”

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to dispositions after the date of
18 the enactment of this Act, and to any disposition occurring
19 on or before such date to which section 877A of the Inter-
20 nal Revenue Code of 1986 (as added by section 201 of
21 this Act) applies.

1 **SEC. 203. ELIMINATION OF EXCLUSION FOR CITIZENS OR**
 2 **RESIDENTS OF UNITED STATES LIVING**
 3 **ABROAD.**

4 Section 911 of the Internal Revenue Code of 1986
 5 (relating to citizens or residents of the United States living
 6 abroad) is amended by redesignating subsection (f) as sub-
 7 section (g) and by inserting after subsection (e) the follow-
 8 ing new subsection:

9 “(f) **TERMINATION.**—This section shall not apply to
 10 any taxable year beginning after December 31, 1996.”

11 **SEC. 204. DISPOSITION OF STOCK IN DOMESTIC CORPO-**
 12 **RATIONS BY 10-PERCENT FOREIGN SHARE-**
 13 **HOLDERS.**

14 (a) **GENERAL RULE.**—Subpart D of part II of sub-
 15 chapter N of chapter 1 of the Internal Revenue Code of
 16 1986 (relating to miscellaneous provisions) is amended by
 17 adding at the end the following new section:

18 **“SEC. 899. DISPOSITION OF STOCK IN DOMESTIC CORPO-**
 19 **RATIONS BY 10-PERCENT FOREIGN SHARE-**
 20 **HOLDERS.**

21 “(a) **GENERAL RULE.**—

22 “(1) **TREATMENT AS EFFECTIVELY CONNECTED**
 23 **WITH UNITED STATES TRADE OR BUSINESS.**—For
 24 purposes of this title, if any nonresident alien indi-
 25 vidual or foreign corporation is a 10-percent share-
 26 holder in any domestic corporation, any gain or loss

1 of such individual or foreign corporation from the
 2 disposition of any stock in such domestic corporation
 3 shall be taken into account—

4 “(A) in the case of a nonresident alien in-
 5 dividual, under section 871(b)(1), or

6 “(B) in the case of a foreign corporation,
 7 under section 882(a)(1),

8 as if the taxpayer were engaged during the taxable
 9 year in a trade or business within the United States
 10 through a permanent establishment in the United
 11 States and as if such gain or loss were effectively
 12 connected with such trade or business and attrib-
 13 utable to such permanent establishment. Notwith-
 14 standing section 865, any such gain or loss shall be
 15 treated as from sources in the United States.

16 “(2) 26-PERCENT MINIMUM TAX ON NON-
 17 RESIDENT ALIEN INDIVIDUALS.—

18 “(A) IN GENERAL.—In the case of any
 19 nonresident alien individual, the amount deter-
 20 mined under section 55(b)(1)(A) shall not be
 21 less than 26 percent of the lesser of—

22 “(i) the individual’s alternative mini-
 23 mum taxable income (as defined in section
 24 55(b)(2)) for the taxable year, or

1 “(ii) the individual’s net taxable stock
2 gain for the taxable year.

3 “(B) NET TAXABLE STOCK GAIN.—For
4 purposes of subparagraph (A), the term ‘net
5 taxable stock gain’ means the excess of—

6 “(i) the aggregate gains for the tax-
7 able year from dispositions of stock in do-
8 mestic corporations with respect to which
9 such individual is a 10-percent share-
10 holder, over

11 “(ii) the aggregate of the losses for
12 the taxable year from dispositions of such
13 stock.

14 “(C) COORDINATION WITH SECTION
15 897(a)(2).—Section 897(a)(2)(A) shall not apply
16 to any nonresident alien individual for any tax-
17 able year for which such individual has a net
18 taxable stock gain, but the amount of such net
19 taxable stock gain shall be increased by the
20 amount of such individual’s net United States
21 real property gain (as defined in section
22 897(a)(2)(B)) for such taxable year.

23 “(b) 10-PERCENT SHAREHOLDER.—

1 “(1) IN GENERAL.—For purposes of this sec-
2 tion, the term ‘10-percent shareholder’ means any
3 person who at any time during the shorter of—

4 “(A) the period beginning on January 1,
5 1996, and ending on the date of the disposition,
6 or

7 “(B) the 5-year period ending on the date
8 of the disposition,
9 owned 10 percent or more (by vote or value) of the
10 stock in the domestic corporation.

11 “(2) CONSTRUCTIVE OWNERSHIP.—

12 “(A) IN GENERAL.—Section 318(a) (relat-
13 ing to constructive ownership of stock) shall
14 apply for purposes of paragraph (1).

15 “(B) MODIFICATIONS.—For purposes of
16 subparagraph (A)—

17 “(i) paragraph (2)(C) of section
18 318(a) shall be applied by substituting ‘10
19 percent’ for ‘50 percent’, and

20 “(ii) paragraph (3)(C) of section
21 318(a) shall be applied—

22 “(I) by substituting ‘10 percent’
23 for ‘50 percent’, and

24 “(II) in any case where such
25 paragraph would not apply but for

1 subclause (I), by considering a cor-
2 poration as owning the stock (other
3 than stock in such corporation) owned
4 by or for any shareholder of such cor-
5 poration in that proportion which the
6 value of the stock which such share-
7 holder owns in such corporation bears
8 to the value of all stock in such cor-
9 poration.

10 “(3) TREATMENT OF STOCK HELD BY CERTAIN
11 PARTNERSHIPS.—

12 “(A) IN GENERAL.—For purposes of this
13 section, if—

14 “(i) a partnership is a 10-percent
15 shareholder in any domestic corporation,
16 and

17 “(ii) 10 percent or more of the capital
18 or profits interests in such partnership is
19 held (directly or indirectly) by nonresident
20 alien individuals or foreign corporations,
21 each partner in such partnership who is not
22 otherwise a 10-percent shareholder in such cor-
23 poration shall, with respect to the stock in such
24 corporation held by the partnership, be treated

1 as a 10-percent shareholder in such corpora-
2 tion.

3 “(B) EXCEPTION.—

4 “(i) IN GENERAL.—Subparagraph (A)
5 shall not apply with respect to stock in a
6 domestic corporation held by any partner-
7 ship if, at all times during the 5-year pe-
8 riod ending on the date of the disposition
9 involved—

10 “(I) the aggregate bases of the
11 stock and securities in such domestic
12 corporation held by such partnership
13 were less than 25 percent of the part-
14 nership’s net adjusted asset cost, and

15 “(II) the partnership did not own
16 50 percent or more (by vote or value)
17 of the stock in such domestic corpora-
18 tion.

19 The Secretary may by regulations dis-
20 regard any failure to meet the require-
21 ments of subclause (I) where the partner-
22 ship normally met such requirements dur-
23 ing such 5-year period.

1 “(ii) NET ADJUSTED ASSET COST.—

2 For purposes of clause (i), the term ‘net
3 adjusted asset cost’ means—

4 “(I) the aggregate bases of all of
5 the assets of the partnership other
6 than cash and cash items, reduced by

7 “(II) the portion of the liabilities
8 of the partnership not allocable (on a
9 proportionate basis) to assets excluded
10 under subclause (I).

11 “(C) EXCEPTION NOT TO APPLY TO 50-
12 PERCENT PARTNERS.—Subparagraph (B) shall
13 not apply in the case of any partner owning (di-
14 rectly or indirectly) more than 50 percent of the
15 capital or profits interests in the partnership at
16 any time during the 5-year period ending on the
17 date of the disposition.

18 “(D) SPECIAL RULES.—For purposes of
19 subparagraphs (B) and (C)—

20 “(i) TREATMENT OF PREDE-
21 CESSORS.—Any reference to a partnership
22 or corporation shall be treated as including
23 a reference to any predecessor thereof.

24 “(ii) PARTNERSHIP NOT IN EXIST-
25 ENCE.—If any partnership was not in ex-

1 istence throughout the entire 5-year period
 2 ending on the date of the disposition, only
 3 the portion of such period during which
 4 the partnership (or any predecessor) was
 5 in existence shall be taken into account.

6 “(E) OTHER PASS-THRU ENTITIES;
 7 TIERED ENTITIES.—Rules similar to the rules
 8 of the preceding provisions of this paragraph
 9 shall also apply in the case of any pass-thru en-
 10 tity other than a partnership and in the case of
 11 tiered partnerships and other entities.

12 “(c) COORDINATION WITH NONRECOGNITION PROVI-
 13 SIONS; ETC.—

14 “(1) COORDINATION WITH NONRECOGNITION
 15 PROVISIONS.—

16 “(A) IN GENERAL.—Except as provided in
 17 subparagraph (B), any nonrecognition provision
 18 shall apply for purposes of this section to a
 19 transaction only in the case of—

20 “(i) an exchange of stock in a domes-
 21 tic corporation for other property the sale
 22 of which would be subject to taxation
 23 under this chapter, or

24 “(ii) a distribution with respect to
 25 which gain or loss would not be recognized

1 under section 336 if the sale of the distrib-
 2 uted property by the distributee would be
 3 subject to tax under this chapter.

4 “(B) REGULATIONS.—The Secretary shall
 5 prescribe regulations (which are necessary or
 6 appropriate to prevent the avoidance of Federal
 7 income taxes) providing—

8 “(i) the extent to which nonrecogni-
 9 tion provisions shall, and shall not, apply
 10 for purposes of this section, and

11 “(ii) the extent to which—

12 “(I) transfers of property in a re-
 13 organization, and

14 “(II) changes in interests in, or
 15 distributions from, a partnership,
 16 trust, or estate,

17 shall be treated as sales of property at fair
 18 market value.

19 “(C) NONRECOGNITION PROVISION.—For
 20 purposes of this paragraph, the term ‘non-
 21 recognition provision’ means any provision of
 22 this title for not recognizing gain or loss.

23 “(2) CERTAIN OTHER RULES MADE APPLICA-
 24 BLE.—For purposes of this section, rules similar to

1 the rules of subsections (g) and (j) of section 897
2 shall apply.

3 “(d) CERTAIN INTEREST TREATED AS STOCK.—For
4 purposes of this section—

5 “(1) any option or other right to acquire stock
6 in a domestic corporation,

7 “(2) the conversion feature of any debt instru-
8 ment issued by a domestic corporation, and

9 “(3) to the extent provided in regulations, any
10 other interest in a domestic corporation other than
11 an interest solely as creditor,
12 shall be treated as stock in such corporation.

13 “(e) TREATMENT OF CERTAIN GAIN AS A DIVI-
14 DEND.—In the case of any gain which would be subject
15 to tax by reason of this section but for a treaty and which
16 results from any distribution in liquidation or redemption,
17 for purposes of this subtitle, such gain shall be treated
18 as a dividend to the extent of the earnings and profits
19 of the domestic corporation attributable to the stock.
20 Rules similar to the rules of section 1248(c) (determined
21 without regard to paragraph (2)(D) thereof) shall apply
22 for purposes of the preceding sentence.

23 “(f) REGULATIONS.—The Secretary shall prescribe
24 such regulations as may be appropriate to carry out the
25 purposes of this section, including—

1 “(1) regulations coordinating the provisions of
2 this section with the provisions of section 897, and

3 “(2) regulations aggregating stock held by a
4 group of persons acting together.”

5 (b) WITHHOLDING OF TAX.—Subchapter A of chap-
6 ter 3 of such Code is amended by adding at the end the
7 following new section:

8 **“SEC. 1447. WITHHOLDING OF TAX ON CERTAIN STOCK**
9 **DISPOSITIONS.**

10 “(a) GENERAL RULE.—Except as otherwise provided
11 in this section, in the case of any disposition of stock in
12 a domestic corporation by a foreign person who is a 10-
13 percent shareholder in such corporation, the withholding
14 agent shall deduct and withhold a tax equal to 10 percent
15 of the amount realized on the disposition.

16 “(b) EXCEPTIONS.—

17 “(1) STOCK WHICH IS NOT REGULARLY TRAD-
18 ED.—In the case of a disposition of stock which is
19 not regularly traded, a withholding agent shall not
20 be required to deduct and withhold any amount
21 under subsection (a) if—

22 “(A) the transferor furnishes to such with-
23 holding agent an affidavit by such transferor
24 stating, under penalty of perjury, that section

1 899 does not apply to such disposition be-
2 cause—

3 “(i) the transferor is not a foreign
4 person, or

5 “(ii) the transferor is not a 10-percent
6 shareholder, and

7 “(B) such withholding agent does not
8 know (or have reason to know) that such affida-
9 vit is not correct.

10 “(2) STOCK WHICH IS REGULARLY TRADED.—

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (B), a withholding agent shall
13 not be required to deduct and withhold any
14 amount under subsection (a) with respect to
15 any disposition of regularly traded stock if such
16 withholding agent does not know (or have rea-
17 son to know) that section 899 applies to such
18 disposition.

19 “(B) SPECIAL RULE WHERE SUBSTANTIAL
20 DISPOSITION.—If—

21 “(i) there is a disposition of regularly
22 traded stock in a corporation, and

23 “(ii) the amount of stock involved in
24 such disposition constitutes 1 percent or

1 more (by vote or value) of the stock in
 2 such corporation,
 3 subparagraph (A) shall not apply but para-
 4 graph (1) shall apply as if the disposition in-
 5 volved stock which was not regularly traded.

6 “(C) NOTIFICATION BY FOREIGN PER-
 7 SON.—If section 899 applies to any disposition
 8 by a foreign person of regularly traded stock,
 9 such foreign person shall notify the withholding
 10 agent that section 899 applies to such disposi-
 11 tion.

12 “(3) NONRECOGNITION TRANSACTIONS.—A
 13 withholding agent shall not be required to deduct
 14 and withhold any amount under subsection (a) in
 15 any case where gain or loss is not recognized by rea-
 16 son of section 899(c) (or the regulations prescribed
 17 under such section).

18 “(c) SPECIAL RULE WHERE NO WITHHOLDING.—
 19 If—

20 “(1) there is no amount deducted and withheld
 21 under this section with respect to any disposition to
 22 which section 899 applies, and

23 “(2) the foreign person does not pay the tax
 24 imposed by this subtitle to the extent attributable to
 25 such disposition on the date prescribed therefor

1 for purposes of determining the amount of such tax, the
2 foreign person's basis in the stock disposed of shall be
3 treated as zero or such other amount as the Secretary may
4 determine (and, for purposes of section 6501, the under-
5 payment of such tax shall be treated as due to a willful
6 attempt to evade such tax).

7 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-
8 poses of this section—

9 “(1) WITHHOLDING AGENT.—The term ‘with-
10 holding agent’ means—

11 “(A) the last United States person to have
12 the control, receipt, custody, disposal, or pay-
13 ment of the amount realized on the disposition,
14 or

15 “(B) if there is no such United States per-
16 son, the person prescribed in regulations.

17 “(2) FOREIGN PERSON.—The term ‘foreign per-
18 son’ means any person other than a United States
19 person.

20 “(3) REGULARLY TRADED STOCK.—The term
21 ‘regularly traded stock’ means any stock of a class
22 which is regularly traded on an established securities
23 market.

24 “(4) AUTHORITY TO PRESCRIBE REDUCED
25 AMOUNT.—At the request of the person making the

1 disposition or the withholding agent, the Secretary
2 may prescribe a reduced amount to be withheld
3 under this section if the Secretary determines that
4 to substitute such reduced amount will not jeopard-
5 ize the collection of the tax imposed by section
6 871(b)(1) or 882(a)(1).

7 “(5) OTHER TERMS.—Except as provided in
8 this section, terms used in this section shall have the
9 same respective meanings as when used in section
10 899.

11 “(6) CERTAIN RULES MADE APPLICABLE.—
12 Rules similar to the rules of section 1445(e) shall
13 apply for purposes of this section.

14 “(e) REGULATIONS.—The Secretary shall prescribe
15 such regulations as may be appropriate to carry out the
16 purposes of this section, including regulations coordinat-
17 ing the provisions of this section with the provisions of
18 sections 1445 and 1446.”

19 (c) EXCEPTION FROM BRANCH PROFITS TAX.—Sub-
20 paragraph (C) of section 884(d)(2) of such Code is amend-
21 ed to read as follows:

22 “(C) gain treated as effectively connected
23 with the conduct of a trade or business within
24 the United States under—

1 “(i) section 897 in the case of the
 2 disposition of a United States real property
 3 interest described in section
 4 897(c)(1)(A)(ii), or
 5 “(ii) section 899.”

6 (d) REPORTS WITH RESPECT TO CERTAIN DIS-
 7 TRIBUTIONS.—Paragraph (2) of section 6038B(a) of such
 8 Code (relating to notice of certain transfers to foreign per-
 9 son) is amended by striking “section 336” and inserting
 10 “section 302, 331, or 336”.

11 (e) CLERICAL AMENDMENTS.—

12 (1) The table of sections for subpart D of part
 13 II of subchapter N of chapter 1 of such Code is
 14 amended by adding at the end the following new
 15 item:

“Sec. 899. Dispositions of stock in domestic corporations by 10-
 percent foreign shareholders.”

16 (2) The table of sections for subchapter A of
 17 chapter 3 of such Code is amended by adding at the
 18 end the following new item:

“Sec. 1447. Withholding of tax on certain stock dispositions.”

19 (f) EFFECTIVE DATE.—

20 (1) IN GENERAL.—Except as otherwise pro-
 21 vided in this subsection, the amendments made by
 22 this section shall apply to dispositions after the date
 23 of the enactment of this Act, except that section

1 1447 of such Code (as added by this section) shall
2 not apply to any disposition before the date 6
3 months after the date of the enactment of this Act.

4 (2) COORDINATION WITH TREATIES.—

5 (A) IN GENERAL.—Sections 899 (other
6 than subsection (e) thereof) and 1447 of such
7 Code (as added by this section) shall not apply
8 to any disposition if such disposition is by a
9 qualified resident of a foreign country and the
10 application of such sections to such disposition
11 would be contrary to any treaty between the
12 United States and such foreign country which
13 is in effect on the date of the enactment of this
14 Act and at the time of such disposition.

15 (B) QUALIFIED RESIDENT.—For purposes
16 of subparagraph (A), the term “qualified resi-
17 dent” means any resident of the foreign country
18 entitled to the benefits of the treaty referred to
19 in subparagraph (A); except that such term
20 shall not include a corporation unless such cor-
21 poration is a qualified resident of such country
22 (as defined in section 884(e)(4) of such Code).

1 **SEC. 205. ALTERNATIVE MINIMUM TAX ON CORPORATIONS**
 2 **IMPORTING PRODUCTS INTO THE UNITED**
 3 **STATES AT ARTIFICIALLY INFLATED PRICES.**

4 (a) IN GENERAL.—Subchapter A of chapter 1 of the
 5 Internal Revenue Code of 1986 (relating to determination
 6 of tax liability) is amended by adding at the end the fol-
 7 lowing new part:

8 **“PART VIII—ALTERNATIVE MINIMUM TAX ON**
 9 **CORPORATIONS IMPORTING PRODUCTS**
 10 **INTO THE UNITED STATES AT ARTIFICIALLY**
 11 **INFLATED PRICES**

“Sec. 59B. Alternative minimum tax on corporations importing products into
 the United States at artificially inflated prices.

12 **“SEC. 59B. ALTERNATIVE MINIMUM TAX ON CORPORA-**
 13 **TIONS IMPORTING PRODUCTS INTO THE**
 14 **UNITED STATES AT ARTIFICIALLY INFLATED**
 15 **PRICES.**

16 “(a) IMPOSITION OF TAX.—In the case of a corpora-
 17 tion to which this section applies, there is hereby imposed
 18 an alternative minimum tax equal to 3 percent of net busi-
 19 ness receipts of the corporation for the taxable year.

20 “(b) TAXPAYERS TO WHICH SECTION APPLIES.—
 21 This section shall apply to any corporation, foreign or do-
 22 mestic, if—

23 “(1) gross sales in the United States during the
 24 tax year of parts or products manufactured by the

1 corporation, or any subsidiary or affiliate controlled
2 by the corporation, exceeded \$10,000,000,

3 “(2) during that same tax year parts or prod-
4 ucts manufactured by the corporation, or any sub-
5 sidiary or affiliate controlled by the corporation, with
6 a customs value in excess of \$10,000,000 were im-
7 ported into the United States, and

8 “(3) its tax obligation under this section ex-
9 ceeds its total tax obligation under all other sections
10 of this title.

11 “(c) CREDIT FOR TAXES PAID.—There shall be a
12 nonrefundable credit against the taxes owed under this
13 section equal to the total of all other taxes paid by the
14 corporation under this title.

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

16 “(1) NET BUSINESS RECEIPTS.—The term ‘net
17 business receipts’ means the value of all parts or
18 products sold in the United States, excluding—

19 “(A) the value of parts or products sold for
20 export,

21 “(B) expenses paid for parts or products
22 produced in the United States,

23 “(C) expenses paid for services performed
24 in the United States, and

1 “(D) amounts paid for income, sales or use
 2 taxes imposed by any State, or political subdivi-
 3 sion thereof, or by the District of Columbia,
 4 Puerto Rico, Guam, or the Virgin Islands.

5 “(2) SUBSIDIARY OR AFFILIATE CONTROLLED
 6 BY THE CORPORATION.—An entity shall be consid-
 7 ered to be a ‘subsidiary or affiliate controlled by the
 8 corporation’ if the corporation owns 5 percent or
 9 more of any class of stock of the entity or if the cor-
 10 poration exercises control over a majority of the
 11 board of directors of the entity.”

12 (b) CLERICAL AMENDMENT.—The table of parts for
 13 such subchapter A is amended by adding at the end the
 14 following new item:

“Part VIII. Alternative minimum tax on corporations importing
 products into the United States at artificially in-
 flated prices.”

15 (c) EFFECTIVE DATE.—The amendments made by
 16 this section shall apply to taxable years beginning after
 17 December 31, 1996.

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