

105TH CONGRESS
1ST SESSION

H. R. 599

To amend the Internal Revenue Code of 1986 to reduce tax benefits for foreign corporations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 5, 1997

Mr. EVANS (for himself, Mr. LIPINSKI, Mr. FRANK of Massachusetts, Mr. SABO, Mr. DELLUMS, Mr. DEFazio, and Mr. SANDERS) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to reduce tax benefits for foreign corporations, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Corporate Welfare
5 Reduction Act of 1997”.

6 **SEC. 2. FOREIGN OIL AND GAS INCOME.**

7 (a) SPECIAL RULES FOR FOREIGN TAX CREDIT
8 WITH RESPECT TO FOREIGN OIL AND GAS INCOME.—

9 (1) CERTAIN TAXES NOT CREDITABLE.—

1 (A) IN GENERAL.—Subsection (a) of sec-
2 tion 907 of the Internal Revenue Code of 1986
3 (relating to reduction in amount allowed as for-
4 eign tax under section 901) is amended to read
5 as follows:

6 “(a) CERTAIN TAXES NOT CREDITABLE.—

7 “(1) IN GENERAL.—For purposes of this sub-
8 title, the term ‘income, war profits, and excess prof-
9 its taxes’ shall not include—

10 “(A) any taxes which are paid or accrued
11 to any foreign country with respect to foreign
12 oil and gas income and which are not imposed
13 under a generally applicable income tax law of
14 such country, and

15 “(B) any taxes (not described in subpara-
16 graph (A)) which are paid or accrued to any
17 foreign country with respect to foreign oil and
18 gas income to the extent that the foreign law
19 imposing such amount of tax is structured, or
20 in fact operates, so that the amount of tax im-
21 posed with respect to foreign oil and gas income
22 will generally be materially greater, over a rea-
23 sonable period of time, than the amount gen-
24 erally imposed on income that is not foreign oil
25 and gas income.

1 In computing the amount not treated as tax under
2 subparagraph (B), such amount shall be treated as
3 a deduction under the foreign law.

4 “(2) FOREIGN OIL AND GAS INCOME.—For pur-
5 poses of this paragraph, the term ‘foreign oil and
6 gas income’ means the amount of foreign oil and gas
7 extraction income and foreign oil related income.

8 “(3) GENERALLY APPLICABLE INCOME TAX
9 LAW.—For purposes of this paragraph, the term
10 ‘generally applicable income tax law’ means any law
11 of a foreign country imposing an income tax if such
12 tax generally applies to all income from sources
13 within such foreign country—

14 “(A) without regard to the residence or na-
15 tionality of the person earning such income,
16 and

17 “(B) in the case of any income earned by
18 a corporation, partnership, or other entity,
19 without regard to—

20 “(i) where such corporation, partner-
21 ship, or other entity is organized, and

22 “(ii) the residence or nationality of
23 the persons owning interests in such cor-
24 poration, partnership, or entity.”

1 (B) CONFORMING AMENDMENT.—Section
 2 907 of such Code is amended by striking sub-
 3 sections (b), (c)(3), (c)(4), (c)(5), and (f).

4 (2) SEPARATE BASKETS FOR FOREIGN OIL AND
 5 GAS EXTRACTION INCOME AND FOREIGN OIL RELAT-
 6 ED INCOME.—

7 (A) IN GENERAL.—Paragraph (1) of sec-
 8 tion 904(d) of such Code (relating to separate
 9 application of section with respect to certain
 10 categories of income) is amended by striking
 11 “and” at the end of subparagraph (H), by re-
 12 designating subparagraph (I) as subparagraph
 13 (K) and by inserting after subparagraph (H)
 14 the following new subparagraphs:

15 “(I) foreign oil and gas extraction income,
 16 “(J) foreign oil related income, and”.

17 (B) DEFINITIONS.—Paragraph (2) of sec-
 18 tion 904(d) of such Code is amended by redes-
 19 ignating subparagraphs (H) and (I) as subpara-
 20 graphs (J) and (K), respectively, and by insert-
 21 ing after subparagraph (G) the following new
 22 subparagraphs:

23 “(H) FOREIGN OIL AND GAS EXTRACTION
 24 INCOME.—The term ‘foreign oil and gas extrac-
 25 tion income’ has the meaning given such term

1 by section 907(c)(1). Such term shall not in-
2 clude any dividend from a noncontrolled section
3 902 corporation.

4 “(I) FOREIGN OIL RELATED INCOME.—
5 The term ‘foreign oil related income’ has the
6 meaning given such term by section 907(c)(2).
7 Such term shall not include any dividend from
8 a noncontrolled section 902 corporation and any
9 shipping income.”

10 (C) CONFORMING AMENDMENT.—Clause
11 (i) of section 904(d)(3)(F) of such Code is
12 amended by striking “or (E)” and inserting
13 “(E), (I), or (J)”.

14 (3) EFFECTIVE DATE.—

15 (A) IN GENERAL.—Except as otherwise
16 provided in this paragraph, the amendments
17 made by this subsection shall apply to taxable
18 years beginning after December 31, 1997.

19 (B) DISALLOWANCE RULE.—

20 (i) Section 907(a) of such Code (as
21 amended by paragraph (1)) shall apply to
22 taxes paid or accrued after December 31,
23 1997, in taxable years ending after such
24 date.

1 (ii) In determining the amount of
2 taxes deemed to be paid in a taxable year
3 beginning after December 31, 1997, under
4 section 902 or 960 of such Code, section
5 907(a) of such Code (as amended by para-
6 graph (1)) shall apply to all taxes whether
7 paid or accrued before, on, or after Decem-
8 ber 31, 1997.

9 (C) LOSS RULE.—Notwithstanding the
10 amendments made by paragraph (1)(B), section
11 907(c)(4) of such Code shall continue to apply
12 with respect to foreign oil and gas extraction
13 losses for taxable years beginning before Janu-
14 ary 1, 1998.

15 (D) TRANSITIONAL RULES.—

16 (i) Any taxes paid or accrued in a tax-
17 able year beginning before January 1,
18 1998, with respect to income which was
19 described in subparagraph (I) of section
20 904(d)(1) of such Code (as in effect on the
21 day before the date of the enactment of
22 this Act) shall be treated as taxes paid or
23 accrued with respect to foreign oil and gas
24 extraction income or foreign oil related in-
25 come (as the case may be) to the extent

1 such taxes were paid or accrued with re-
2 spect to such type of income.

3 (ii) Any unused oil and gas extraction
4 taxes which under section 907(f) of such
5 Code (as so in effect) would have been al-
6 lowed as a carryover to the taxpayer's first
7 taxable year beginning after December 31,
8 1997 (determined without regard to the
9 limitation of paragraph (2) of such section
10 907(f) for such first taxable year), shall be
11 allowed as carryovers under section 904(c)
12 of such Code in the same manner as if
13 they were unused taxes under section
14 904(c) with respect to foreign oil and gas
15 extraction income.

16 (b) ELIMINATION OF DEFERRAL FOR FOREIGN OIL
17 AND GAS EXTRACTION INCOME.—

18 (1) GENERAL RULE.—Paragraph (1) of section
19 954(g) of the Internal Revenue Code of 1986 (defin-
20 ing foreign base company oil related income) is
21 amended to read as follows:

22 “(1) IN GENERAL.—Except as otherwise pro-
23 vided in this subsection, the term ‘foreign oil and
24 gas income’ means any income of a kind which

1 would be taken into account in determining the
2 amount of—

3 “(A) foreign oil and gas extraction income
4 (as defined in section 907(c)(1)), or

5 “(B) foreign oil related income (as defined
6 in section 907(c)(2)).”

7 (2) CONFORMING AMENDMENTS.—

8 (A)(i) Subsections (a)(5), (b)(5), and
9 (b)(8) of section 954 of such Code are each
10 amended by striking “base company oil related
11 income” each place it appears (including in the
12 heading of subsection (b)(8)) and inserting “oil
13 and gas income”.

14 (ii) Subsection (b)(4) of section 954 of
15 such Code is amended by striking “base com-
16 pany oil-related income” and inserting “oil and
17 gas income”.

18 (B) The subsection heading for subsection
19 (g) of section 954 of such Code is amended by
20 striking “FOREIGN BASE COMPANY OIL RE-
21 LATED INCOME” and inserting “FOREIGN OIL
22 AND GAS INCOME”.

23 (C) Subparagraph (A) of section 954(g)(2)
24 of such Code is amended by striking “foreign

1 base company oil related income” and inserting
2 “foreign oil and gas income”.

3 (3) EFFECTIVE DATE.—The amendments made
4 by this subsection shall apply to taxable years of for-
5 eign corporations beginning after December 31,
6 1997, and to taxable years of United States share-
7 holders in which or with which such taxable years of
8 foreign corporations end.

9 **SEC. 3. TRANSFER PRICING.**

10 (a) AUTHORITY OF SECRETARY WHEN LEGAL LIM-
11 ITS ON TRANSFER BY TAXPAYER.—Section 482 of the In-
12 ternal Revenue Code of 1986 (relating to allocation of in-
13 come and deductions among taxpayers) is amended by
14 adding at the end the following: “The authority of the Sec-
15 retary under this section shall not be limited by any re-
16 striction (by any law or agreement) on the ability of such
17 interests, organizations, trades, or businesses to transfer
18 or receive money or other property.”

19 (b) EFFECTIVE DATE.—The amendment made by
20 this section shall apply to taxable years beginning after
21 December 31, 1997.

1 **SEC. 4. EXCLUSION OF FOREIGN EARNED INCOME USED**
2 **FOR FOREIGN TUITION COSTS IN LIEU OF**
3 **\$70,000 EXCLUSION, OTHER THAN FOR EM-**
4 **PLOYEES OF CERTAIN TAX-EXEMPT ORGANI-**
5 **ZATIONS.**

6 (a) IN GENERAL.—Paragraph (1) of section 911(a)
7 of the Internal Revenue Code of 1986 (relating to exclu-
8 sion from income) is amended by striking “foreign earned
9 income” and inserting “applicable foreign-earned
10 amount”.

11 (b) TUITION EXCLUSION IN LIEU OF INCOME EX-
12 CLUSION.—Subsection (b) of section 911 of such Code is
13 amended—

14 (1) by redesignating paragraphs (1) and (2) as
15 paragraphs (2) and (3), respectively,

16 (2) by inserting after the heading the following
17 new paragraph:

18 “(1) APPLICABLE FOREIGN-EARNED
19 AMOUNT.—For purposes of this section, the term
20 ‘applicable foreign-earned amount’ means—

21 “(A) foreign earned income, in the case of
22 an individual who is an employee of an organi-
23 zation described in paragraph (3) or (4) of sec-
24 tion 501(c) and exempt from tax under section
25 501(a), and

1 “(B) the foreign tuition amount, in the
2 case of an individual not described in subpara-
3 graph (A).”, and

4 (3) by adding at the end the following new
5 paragraphs:

6 “(4) FOREIGN TUITION AMOUNT.—

7 “(A) IN GENERAL.—For purposes of this
8 section, the term ‘foreign tuition amount’
9 means so much of the foreign earned income of
10 the individual as does not exceed the tuition
11 paid by the individual during the taxable year
12 for the education of a dependent child—

13 “(i) in the country in which is located
14 the abode referred to in clause (i) or (ii) of
15 subsection (c)(2)(B),

16 “(ii) at an educational organization
17 described in section 170(b)(1)(A)(ii), and

18 “(iii) during the taxable year or dur-
19 ing the first 5 months of the next taxable
20 year.

21 For purposes of this subparagraph, the term
22 ‘education’ does not include education above the
23 secondary school level.

24 “(B) DEPENDENT CHILD.—For purposes
25 of subparagraph (A), the term ‘dependent child’

1 means an individual who is a son or daughter
 2 of the taxpayer and is a dependent of the tax-
 3 payer (within the meaning of section 152).
 4 Rules similar to the rules of section 152(b)(2)
 5 shall apply for purposes of this subparagraph.

6 “(5) SPECIAL RULE IF EMPLOYED BY TAX-EX-
 7 EMPT ORGANIZATION FOR PART OF YEAR.—For pur-
 8 poses of this subsection, a qualified individual who
 9 is an employee described in paragraph (1)(A) for
 10 less than the entire taxable year shall be treated, for
 11 the taxable year—

12 “(A) as being such an employee, if such in-
 13 dividual was such an employee for at least a 6-
 14 month period during the taxable year, and

15 “(B) as not being such an employee, if
 16 such individual is not described in subpara-
 17 graph (A).

18 An individual may elect to be treated as not de-
 19 scribed in subparagraph (A) for the taxable year.”

20 (b) CONFORMING AMENDMENTS.—

21 (1) Paragraph (4) of section 86(f) of such Code
 22 is amended by striking “section 911(b)(1)” and in-
 23 serting “section 911(b)(2)”.

24 (2) Subsection (b) of section 911 of such Code
 25 is amended in the heading by striking “FOREIGN

1 EARNED INCOME” and inserting “APPLICABLE FOR-
 2 EIGN-EARNED AMOUNT”.

3 (3) Paragraph (2) of section 911(b) of such
 4 Code (as redesignated by this section) is amended in
 5 the heading by striking “DEFINITION” and inserting
 6 “FOREIGN EARNED INCOME”.

7 (4) Subparagraph (E) of section 911(c)(3) of
 8 such Code is amended by striking “subsection
 9 (b)(2)” and inserting “subsection (b)(3)”.

10 (5) Paragraph (4) of section 911(d) of such
 11 Code is amended by striking “subsections (b)(2)(A)
 12 and” and inserting “subsections (b)(3)(A) and”.

13 (c) EFFECTIVE DATE.—The amendments made by
 14 this section shall apply to taxable years beginning after
 15 the date of the enactment of this Act.

16 **SEC. 5. DISPOSITION OF STOCK IN DOMESTIC CORPO-**
 17 **RATIONS BY 10-PERCENT FOREIGN SHARE-**
 18 **HOLDERS.**

19 (a) GENERAL RULE.—Subpart D of part II of sub-
 20 chapter N of chapter 1 of the Internal Revenue Code of
 21 1986 (relating to miscellaneous provisions) is amended by
 22 adding at the end the following new section:

1 **“SEC. 899. DISPOSITION OF STOCK IN DOMESTIC CORPO-**
2 **RATIONS BY 10-PERCENT FOREIGN SHARE-**
3 **HOLDERS.**

4 “(a) GENERAL RULE.—

5 “(1) TREATMENT AS EFFECTIVELY CONNECTED
6 WITH UNITED STATES TRADE OR BUSINESS.—For
7 purposes of this title, if any nonresident alien indi-
8 vidual or foreign corporation is a 10-percent share-
9 holder in any domestic corporation, any gain or loss
10 of such individual or foreign corporation from the
11 disposition of any stock in such domestic corporation
12 shall be taken into account—

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

15 “(B) in the case of a foreign corporation,
16 under section 882(a)(1),
17 as if the taxpayer were engaged during the taxable
18 year in a trade or business within the United States
19 through a permanent establishment in the United
20 States and as if such gain or loss were effectively
21 connected with such trade or business and attrib-
22 utable to such permanent establishment. Notwith-
23 standing section 865, any such gain or loss shall be
24 treated as from sources in the United States.

25 “(2) 26-PERCENT MINIMUM TAX ON NON-
26 RESIDENT ALIEN INDIVIDUALS.—

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

5 “(i) the individual’s alternative mini-
6 mum taxable income (as defined in section
7 55(b)(2)) for the taxable year, or

8 “(ii) the individual’s net taxable stock
9 gain for the taxable year.

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

13 “(i) the aggregate gains for the tax-
14 able year from dispositions of stock in do-
15 mestic corporations with respect to which
16 such individual is a 10-percent share-
17 holder, over

18 “(ii) the aggregate of the losses for
19 the taxable year from dispositions of such
20 stock.

21 “(C) COORDINATION WITH SECTION
22 897(a)(2).—Section 897(a)(2)(A) shall not apply
23 to any nonresident alien individual for any tax-
24 able year for which such individual has a net
25 taxable stock gain, but the amount of such net

1 taxable stock gain shall be increased by the
2 amount of such individual's net United States
3 real property gain (as defined in section
4 897(a)(2)(B)) for such taxable year.

5 “(b) 10-PERCENT SHAREHOLDER.—

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

9 “(A) the period beginning on January 1,
10 1997, and ending on the date of the disposition,
11 or

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

16 “(2) CONSTRUCTIVE OWNERSHIP.—

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

20 “(B) MODIFICATIONS.—For purposes of
21 subparagraph (A)—

22 “(i) paragraph (2)(C) of section
23 318(a) shall be applied by substituting ‘10
24 percent’ for ‘50 percent’, and

1 “(ii) paragraph (3)(C) of section
2 318(a) shall be applied—

3 “(I) by substituting ‘10 percent’
4 for ‘50 percent’, and

5 “(II) in any case where such
6 paragraph would not apply but for
7 subclause (I), by considering a cor-
8 poration as owning the stock (other
9 than stock in such corporation) owned
10 by or for any shareholder of such cor-
11 poration in that proportion which the
12 value of the stock which such share-
13 holder owns in such corporation bears
14 to the value of all stock in such cor-
15 poration.

16 “(3) TREATMENT OF STOCK HELD BY CERTAIN
17 PARTNERSHIPS.—

18 “(A) IN GENERAL.—For purposes of this
19 section, if—

20 “(i) a partnership is a 10-percent
21 shareholder in any domestic corporation,
22 and

23 “(ii) 10 percent or more of the capital
24 or profits interests in such partnership is

1 held (directly or indirectly) by nonresident
2 alien individuals or foreign corporations,
3 each partner in such partnership who is not
4 otherwise a 10-percent shareholder in such cor-
5 poration shall, with respect to the stock in such
6 corporation held by the partnership, be treated
7 as a 10-percent shareholder in such corpora-
8 tion.

9 “(B) EXCEPTION.—

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

16 “(I) the aggregate bases of the
17 stock and securities in such domestic
18 corporation held by such partnership
19 were less than 25 percent of the part-
20 nership’s net adjusted asset cost, and

21 “(II) the partnership did not own
22 50 percent or more (by vote or value)
23 of the stock in such domestic corpora-
24 tion.

1 The Secretary may by regulations dis-
2 regard any failure to meet the require-
3 ments of subclause (I) where the partner-
4 ship normally met such requirements dur-
5 ing such 5-year period.

6 “(ii) NET ADJUSTED ASSET COST.—
7 For purposes of clause (i), the term ‘net
8 adjusted asset cost’ means—

9 “(I) the aggregate bases of all of
10 the assets of the partnership other
11 than cash and cash items, reduced by

12 “(II) the portion of the liabilities
13 of the partnership not allocable (on a
14 proportionate basis) to assets excluded
15 under subclause (I).

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

23 “(D) SPECIAL RULES.—For purposes of
24 subparagraphs (B) and (C)—

1 “(i) TREATMENT OF PREDE-
2 CESSORS.—Any reference to a partnership
3 or corporation shall be treated as including
4 a reference to any predecessor thereof.

5 “(ii) PARTNERSHIP NOT IN EXIST-
6 ENCE.—If any partnership was not in ex-
7 istence throughout the entire 5-year period
8 ending on the date of the disposition, only
9 the portion of such period during which
10 the partnership (or any predecessor) was
11 in existence shall be taken into account.

12 “(E) OTHER PASS-THRU ENTITIES;
13 TIERED ENTITIES.—Rules similar to the rules
14 of the preceding provisions of this paragraph
15 shall also apply in the case of any pass-thru en-
16 tity other than a partnership and in the case of
17 tiered partnerships and other entities.

18 “(c) COORDINATION WITH NONRECOGNITION PROVI-
19 SIONS; ETC.—

20 “(1) COORDINATION WITH NONRECOGNITION
21 PROVISIONS.—

22 “(A) IN GENERAL.—Except as provided in
23 subparagraph (B), any nonrecognition provision
24 shall apply for purposes of this section to a
25 transaction only in the case of—

1 “(i) an exchange of stock in a domes-
2 tic corporation for other property the sale
3 of which would be subject to taxation
4 under this chapter, or

5 “(ii) a distribution with respect to
6 which gain or loss would not be recognized
7 under section 336 if the sale of the distrib-
8 uted property by the distributee would be
9 subject to tax under this chapter.

10 “(B) REGULATIONS.—The Secretary shall
11 prescribe regulations (which are necessary or
12 appropriate to prevent the avoidance of Federal
13 income taxes) providing—

14 “(i) the extent to which nonrecogni-
15 tion provisions shall, and shall not, apply
16 for purposes of this section, and

17 “(ii) the extent to which—

18 “(I) transfers of property in a re-
19 organization, and

20 “(II) changes in interests in, or
21 distributions from, a partnership,
22 trust, or estate,

23 shall be treated as sales of property at fair
24 market value.

1 “(C) NONRECOGNITION PROVISION.—For
2 purposes of this paragraph, the term ‘non-
3 recognition provision’ means any provision of
4 this title for not recognizing gain or loss.

5 “(2) CERTAIN OTHER RULES MADE APPLICA-
6 BLE.—For purposes of this section, rules similar to
7 the rules of subsections (g) and (j) of section 897
8 shall apply.

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

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

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

15 “(3) to the extent provided in regulations, any
16 other interest in a domestic corporation other than
17 an interest solely as creditor,
18 shall be treated as stock in such corporation.

19 “(e) TREATMENT OF CERTAIN GAIN AS A DIVI-
20 DEND.—In the case of any gain which would be subject
21 to tax by reason of this section but for a treaty and which
22 results from any distribution in liquidation or redemption,
23 for purposes of this subtitle, such gain shall be treated
24 as a dividend to the extent of the earnings and profits
25 of the domestic corporation attributable to the stock.

1 Rules similar to the rules of section 1248(c) (determined
2 without regard to paragraph (2)(D) thereof) shall apply
3 for purposes of the preceding sentence.

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

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

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

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

14 **“SEC. 1447. WITHHOLDING OF TAX ON CERTAIN STOCK**
15 **DISPOSITIONS.**

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

22 “(b) EXCEPTIONS.—

23 “(1) STOCK WHICH IS NOT REGULARLY TRAD-
24 ED.—In the case of a disposition of stock which is
25 not regularly traded, a withholding agent shall not

1 be required to deduct and withhold any amount
2 under subsection (a) if—

3 “(A) the transferor furnishes to such with-
4 holding agent an affidavit by such transferor
5 stating, under penalty of perjury, that section
6 899 does not apply to such disposition be-
7 cause—

8 “(i) the transferor is not a foreign
9 person, or

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

12 “(B) such withholding agent does not
13 know (or have reason to know) that such affida-
14 vit is not correct.

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

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

24 “(B) SPECIAL RULE WHERE SUBSTANTIAL
25 DISPOSITION.—If—

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

3 “(ii) the amount of stock involved in
4 such disposition constitutes 1 percent or
5 more (by vote or value) of the stock in
6 such corporation,

7 subparagraph (A) shall not apply but para-
8 graph (1) shall apply as if the disposition in-
9 volved stock which was not regularly traded.

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

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

22 “(c) SPECIAL RULE WHERE NO WITHHOLDING.—
23 If—

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

4 “(2) the foreign person does not pay the tax
5 imposed by this subtitle to the extent attributable to
6 such disposition on the date prescribed therefor,
7 for purposes of determining the amount of such tax, the
8 foreign person’s basis in the stock disposed of shall be
9 treated as zero or such other amount as the Secretary may
10 determine (and, for purposes of section 6501, the under-
11 payment of such tax shall be treated as due to a willful
12 attempt to evade such tax).

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

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

17 “(A) the last United States person to have
18 the control, receipt, custody, disposal, or pay-
19 ment of the amount realized on the disposition,
20 or

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

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

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

5 “(4) AUTHORITY TO PRESCRIBE REDUCED
6 AMOUNT.—At the request of the person making the
7 disposition or the withholding agent, the Secretary
8 may prescribe a reduced amount to be withheld
9 under this section if the Secretary determines that
10 to substitute such reduced amount will not jeopard-
11 ize the collection of the tax imposed by section
12 871(b)(1) or 882(a)(1).

13 “(5) OTHER TERMS.—Except as provided in
14 this section, terms used in this section shall have the
15 same respective meanings as when used in section
16 899.

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

20 “(e) REGULATIONS.—The Secretary shall prescribe
21 such regulations as may be appropriate to carry out the
22 purposes of this section, including regulations coordinat-
23 ing the provisions of this section with the provisions of
24 sections 1445 and 1446.”

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

4 “(C) gain treated as effectively connected
 5 with the conduct of a trade or business within
 6 the United States under—

7 “(i) section 897 in the case of the
 8 disposition of a United States real property
 9 interest described in section
 10 897(c)(1)(A)(ii), or

11 “(ii) section 899.”.

12 (d) REPORTS WITH RESPECT TO CERTAIN DIS-
 13 TRIBUTIONS.—Paragraph (2) of section 6038B(a) of such
 14 Code (relating to notice of certain transfers to foreign per-
 15 sons) is amended by striking “section 336” and inserting
 16 “section 302, 331, or 336”.

17 (e) CLERICAL AMENDMENTS.—

18 (1) The table of sections for subpart D of part
 19 II of subchapter N of chapter 1 of such Code is
 20 amended by adding at the end the following new
 21 item:

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

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

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

4 (f) EFFECTIVE DATE.—

5 (1) IN GENERAL.—Except as otherwise pro-
6 vided in this subsection, the amendments made by
7 this section shall apply to dispositions after the date
8 of the enactment of this Act, except that section
9 1447 of such Code (as added by this section) shall
10 not apply to any disposition before the date 6
11 months after the date of the enactment of this Act.

12 (2) COORDINATION WITH TREATIES.—

13 (A) IN GENERAL.—Sections 899 (other
14 than subsection (e) thereof) and 1447 of such
15 Code (as added by this section) shall not apply
16 to any disposition if such disposition is by a
17 qualified resident of a foreign country and the
18 application of such sections to such disposition
19 would be contrary to any treaty between the
20 United States and such foreign country which
21 is in effect on the date of the enactment of this
22 Act and at the time of such disposition.

23 (B) QUALIFIED RESIDENT.—For purposes
24 of subparagraph (A), the term “qualified resi-
25 dent” means any resident of the foreign country

1 entitled to the benefits of the treaty referred to
 2 in subparagraph (A); except that such term
 3 shall not include a corporation unless such cor-
 4 poration is a qualified resident of such country
 5 (as defined in section 884(e)(4) of such Code).

6 **SEC. 6. PORTFOLIO DEBT.**

7 (a) IN GENERAL.—Section 871(h)(3) of the Internal
 8 Revenue Code of 1986 is amended to read as follows:

9 “(3) PORTFOLIO INTEREST TO INCLUDE ONLY
 10 INTEREST ON GOVERNMENT OBLIGATIONS.—The
 11 term ‘portfolio interest’ shall include only interest
 12 paid on an obligation issued by a governmental en-
 13 tity.”

14 (b) CONFORMING AMENDMENTS.—

15 (1) Section 881(c)(3) of such Code is amend-
 16 ed—

17 (A) in subparagraph (A), by adding “or”
 18 at the end, and

19 (B) by striking subparagraph (B) and re-
 20 designating subparagraph (C) as subparagraph
 21 (B).

22 (2) Section 881(c)(4) of such Code is amend-
 23 ed—

24 (A) by striking “section 871(h)(4)” and in-
 25 serting “section 871(h)(3) or (4)”, and

1 (B) in the heading, by inserting “INTER-
 2 EST ON NON-GOVERNMENT OBLIGATIONS OR”
 3 after “INCLUDE”.

4 (c) EFFECTIVE DATE.—The amendments made by
 5 this section shall apply to interest received after December
 6 31, 1997, with respect to obligations issued after such
 7 date.

8 **SEC. 7. SOURCE OF INCOME FROM CERTAIN SALES OF IN-**
 9 **VENTORY PROPERTY.**

10 (a) GENERAL RULE.—Subsection (b) of section 865
 11 of the Internal Revenue Code of 1986 (relating to excep-
 12 tion for inventory property) is amended to read as follows:

13 “(b) INVENTORY PROPERTY.—

14 “(1) INCOME ATTRIBUTABLE TO PRODUCTION
 15 ACTIVITY.—In the case of income from the sale of
 16 inventory property produced (in whole or in part) by
 17 the taxpayer—

18 “(A) a portion (determined under regula-
 19 tions) of such income shall be allocated to pro-
 20 duction activity (and sourced in the United
 21 States or outside the United States depending
 22 on where such activity occurs), and

23 “(B) the remaining portion of such income
 24 shall be sourced under the other provisions of
 25 this section.

1 The regulations prescribed under subparagraph (A)
2 shall provide that at least 50 percent of such income
3 shall be allocated to production activities.

4 “(2) SALES INCOME.—

5 “(A) UNITED STATES RESIDENTS.—In-
6 come from the sale of inventory property by a
7 United States resident shall be sourced outside
8 the United States if—

9 “(i) the property is sold for use, con-
10 sumption, or disposition outside the United
11 States and an office or another fixed place
12 of business of the taxpayer outside the
13 United States participated materially in
14 the sale, and

15 “(ii) such sale is not (directly or indi-
16 rectly) to an affiliate of the taxpayer.

17 “(B) NONRESIDENT.—Income from the
18 sale of inventory property by a nonresident
19 shall be sourced in the United States if—

20 “(i) the taxpayer has an office or
21 other fixed place of business in the United
22 States, and

23 “(ii) such sale is through such office
24 or other fixed place of business.

1 This subparagraph shall not apply if the require-
 2 ments of clauses (i) and (ii) of subparagraph (A) are
 3 met with respect to such sale.

4 “(3) COORDINATION WITH TREATIES.—For
 5 purposes of paragraph (2)(A)(i), a United States
 6 resident shall not be treated as having an office or
 7 fixed place of business in a foreign country if a trea-
 8 ty prevents such country from imposing an income
 9 tax on the income.”

10 (b) EFFECTIVE DATE.—The amendments made by
 11 this section shall apply to income from sales occurring
 12 after December 31, 1997.

13 **SEC. 8. ENHANCEMENT OF BENEFITS FOR FOREIGN SALES**
 14 **CORPORATIONS.**

15 (a) IN GENERAL.—Subsection (a) of section 923 of
 16 the Internal Revenue Code of 1986 is amended—

17 (1) in paragraph (2), by striking “32 percent”
 18 and inserting “34 percent”, and

19 (2) in paragraph (3), by striking “¹⁶/₂₃” and in-
 20 serting “¹⁷/₂₃”.

21 (b) SPECIAL RULES RELATING TO CORPORATE
 22 PREFERENCE ITEMS.—Paragraph (4) of section 291(a) of
 23 such Code is amended—

1 (1) in subparagraph (A), by striking “‘30 per-
2 cent’ for ‘32 percent’” and inserting “‘32 percent’
3 for ‘34 percent’”, and

4 (2) in subparagraph (B), by striking “‘ $15/23$ ’ for
5 ‘ $16/23$ ’” and inserting “‘ $16/23$ ’ for ‘ $17/23$ ’”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to taxable years beginning after
8 December 31, 1997.

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