

105TH CONGRESS
1ST SESSION

H. R. 854

To discourage domestic corporations from establishing foreign manufacturing subsidiaries in order to avoid Federal taxes by including in gross income of United States shareholders in foreign corporations the retained earnings of any such subsidiary which are attributable to manufacturing operations in runaway plants or tax havens.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 26, 1997

Mr. TRAFICANT introduced the following bill; which was referred to the
Committee on Ways and Means

A BILL

To discourage domestic corporations from establishing foreign manufacturing subsidiaries in order to avoid Federal taxes by including in gross income of United States shareholders in foreign corporations the retained earnings of any such subsidiary which are attributable to manufacturing operations in runaway plants or tax havens.

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 Subsidiary
5 Tax Equity Act”.

1 **SEC. 2. INCOME FROM RUNAWAY PLANTS OR FROM MANU-**
 2 **FACTURING OPERATIONS LOCATED IN A**
 3 **COUNTRY WHICH PROVIDES A TAX HOLIDAY**
 4 **INCLUDED IN SUBPART F INCOME.**

5 (a) FOREIGN BASE COMPANY MANUFACTURING RE-
 6 LATED INCOME ADDED TO CURRENTLY TAXED
 7 AMOUNTS.—Subsection (a) of section 954 of the Internal
 8 Revenue Code of 1986 (defining foreign base company in-
 9 come) is amended by striking “and” at the end of para-
 10 graph (4), by striking the period at the end of paragraph
 11 (5) and inserting “, and”, and by adding at the end there-
 12 of the following new paragraph:

13 “(6) the foreign base company manufacturing
 14 related income for the taxable year (determined
 15 under subsection (h) and reduced as provided in
 16 subsection (b)(5)).”

17 (b) DEFINITION OF FOREIGN BASE COMPANY MANU-
 18 FACTURING RELATED INCOME.—Section 954 of such
 19 Code is amended by adding at the end thereof the follow-
 20 ing new subsection:

21 “(h) FOREIGN BASE COMPANY MANUFACTURING
 22 RELATED INCOME.—

23 “(1) IN GENERAL.—For purposes of this sec-
 24 tion, the term ‘foreign base company manufacturing
 25 related income’ means income (whether in the form
 26 of profits, commissions, fees, or otherwise) derived in

1 connection with the manufacture for or sale to any
 2 person of personal property by the controlled foreign
 3 corporation where the property sold was manufac-
 4 tured by the controlled foreign corporation in any
 5 country other than the United States if such prop-
 6 erty or any component of such property was manu-
 7 factured—

8 “(A) in a tax holiday plant, or

9 “(B) in a runaway plant.

10 “(2) OTHER DEFINITIONS; SPECIAL RULES.—

11 For purposes of this subsection—

12 “(A) TAX HOLIDAY PLANT DEFINED.—The
 13 term ‘tax holiday plant’ means any facility—

14 “(i) operated by the controlled foreign
 15 corporation in connection with the manu-
 16 facture of personal property, and

17 “(ii) with respect to which any eco-
 18 nomic benefit under any tax law of the
 19 country in which such facility is located ac-
 20 crued—

21 “(I) to such corporation,

22 “(II) for the purpose of providing
 23 an incentive to such corporation to es-
 24 tablish, maintain, or expand such fa-
 25 cility, and

1 “(III) for the taxable year of
2 such corporation during which the
3 personal property referred to in para-
4 graph (1) was manufactured.

5 “(B) RUNAWAY PLANT DEFINED.—The
6 term ‘runaway plant’ means any facility—

7 “(i) for the manufacture of personal
8 property of which not less than 10 percent
9 is used, consumed, or otherwise disposed of
10 in the United States, and

11 “(ii) which is established or main-
12 tained by the controlled foreign corporation
13 in a country in which the effective tax rate
14 imposed by such country on the corpora-
15 tion is less than 90 percent of the effective
16 tax rate which would be imposed on such
17 corporation under this title.

18 “(C) ECONOMIC BENEFIT UNDER ANY TAX
19 LAW DEFINED.—The term ‘economic benefit
20 under any tax law’ includes—

21 “(i) any exclusion or deduction of any
22 amount from gross income derived in con-
23 nection with—

24 “(I) the operation of any manu-
25 facturing facility, or

1 “(II) the manufacture or sale of
2 any personal property,
3 which would otherwise be subject to tax
4 under the law of such country;

5 “(ii) any reduction in the rate of any
6 tax which would otherwise be imposed
7 under the laws of such country with re-
8 spect to any facility or property referred to
9 in clause (i) (including any ad valorem tax
10 or excise tax with respect to such prop-
11 erty);

12 “(iii) any credit against any tax which
13 would otherwise be assessed against any
14 such facility or property or any income de-
15 rived in connection with the operation of
16 any such facility or the manufacture or
17 sale of any such property; and

18 “(iv) any abatement of any amount of
19 tax otherwise due and any other reduction
20 in the actual amount of tax paid to such
21 country.

22 “(D) MANUFACTURE DEFINED.—The term
23 ‘manufacture’ or ‘manufacturing’ includes any
24 production, processing, assembling, or finishing
25 of any personal property or any component of

1 property not yet assembled and any packaging,
2 handling, or other activity incidental to the
3 shipment or delivery of such property to any
4 buyer.

5 “(E) CORPORATION INCLUDES ANY RELAT-
6 ED PERSON.—The term ‘controlled foreign cor-
7 poration’ includes any related person with re-
8 spect to such corporation.

9 “(F) SPECIAL RULE FOR DETERMINING
10 WHICH TAXABLE YEAR AN ECONOMIC BENEFIT
11 WAS OBTAINED.—An economic benefit under
12 any tax law shall be treated as having accrued
13 in the taxable year of the controlled foreign cor-
14 poration in which such corporation actually ob-
15 tained the benefit, notwithstanding the fact that
16 such benefit may have been allowable for any
17 preceding or succeeding taxable year and was
18 carried forward or back, for any reason, to the
19 taxable year.

20 “(3) LIMITATION ON APPLICATION OF PARA-
21 GRAPH (1) IN CERTAIN CASES.—For purposes of this
22 section—

23 “(A) IN GENERAL.—The term ‘foreign
24 base company manufacturing related income’

1 shall not include any income of a controlled for-
2 eign corporation from the manufacture or sale
3 of personal property if—

4 “(i) such corporation is not a corpora-
5 tion significantly engaged in manufactur-
6 ing,

7 “(ii) the investment in the expansion
8 of an existing facility which gave rise to a
9 tax holiday for such facility was not a sub-
10 stantial investment, or

11 “(iii) the personal property was used,
12 consumed, or otherwise disposed of in the
13 country in which such property was manu-
14 factured.

15 “(B) CORPORATION SIGNIFICANTLY EN-
16 GAGED IN MANUFACTURING DEFINED.—

17 “(i) GENERAL RULE.—A corporation
18 shall be deemed to be significantly engaged
19 in manufacturing if the value of real prop-
20 erty and other capital assets owned or con-
21 trolled by the corporation and dedicated to
22 manufacturing operations is more than 10
23 percent of the total value of all real prop-
24 erty and other capital assets owned or con-
25 trolled by such corporation.

1 “(ii) SPECIAL RULE FOR ASSESSING
2 PROPERTY VALUE.—The value of any
3 property owned by the corporation is the
4 basis of such corporation in such property.
5 The basis of the corporation in any prop-
6 erty which was acquired other than by pur-
7 chase shall be the fair market value of
8 such property at the time of such acquisi-
9 tion. Any property controlled but not
10 owned by such corporation under any lease
11 (or any other instrument which gives such
12 corporation any right of use or occupancy
13 with respect to such property) shall be
14 treated as property acquired other than by
15 purchase in the manner provided in the
16 preceding sentence.

17 “(C) SUBSTANTIAL INVESTMENT DE-
18 FINED.—The term ‘substantial investment’
19 means any amount which—

20 “(i) was added to the capital account
21 for an existing facility during the 3-year
22 period ending on the last day of any tax-
23 able year with respect to which such facil-
24 ity is a tax holiday plant, and

1 “(ii) caused the sum of all amounts
 2 added to such account during such period
 3 to exceed 20 percent of the total value of
 4 such facility (determined in the manner
 5 provided in subparagraph (B)(ii)) on the
 6 first day of such period.”

7 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

8 (1) The last sentence of subsection (b)(4) of
 9 section 954 of such Code is amended by striking
 10 “subsection (a)(5).” and by inserting “subsection
 11 (a)(5) or foreign base company manufacturing relat-
 12 ed income described in subsection (a)(6).”

13 (2) Subsection (b)(5) of section 954 of such
 14 Code is amended by striking “and the foreign base
 15 company oil related income” and by inserting “the
 16 foreign base company oil related income, and the
 17 foreign base company manufacturing related in-
 18 come”.

19 (3) Subsection (b) of section 954 of such Code
 20 is amended by adding at the end the following new
 21 paragraph:

22 “(9) FOREIGN BASE COMPANY MANUFACTURING
 23 RELATED INCOME NOT TREATED AS ANOTHER KIND
 24 OF BASE COMPANY INCOME.—Income of a corpora-
 25 tion which is foreign base company manufacturing

1 related income shall not be treated as foreign base
2 company income of such corporation under any
3 paragraph of subsection (a) other than paragraph
4 (6).”

5 (d) EFFECTIVE DATES.—

6 (1) IN GENERAL.—The amendments made by
7 this section shall apply to taxable years of foreign
8 corporations beginning after December 31, 1997,
9 and to taxable years of United States shareholders
10 in which, or with which, such taxable years of for-
11 eign corporations end.

12 (2) INVESTMENTS BEFORE THE DATE OF EN-
13 ACTMENT NOT TAKEN INTO ACCOUNT.—No facility
14 of a foreign controlled corporation shall be treated
15 as a tax holiday plant (within the meaning of section
16 954(h)(2)(A) of such Code, as amended by this sec-
17 tion) or as a runaway plant (within the meaning of
18 section 954(h)(2)(B) of such Code, as amended by
19 this section) on the basis of any amount paid or in-
20 curred with respect to such facility and added to the
21 capital account for such facility before the date of
22 the enactment of this Act.

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