

107TH CONGRESS
1ST SESSION

S. 1475

To amend the Internal Revenue Code of 1986 to provide an appropriate and permanent tax structure for investments in the Commonwealth of Puerto Rico and the possessions of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 26, 2001

Mr. BREAU (for himself and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide an appropriate and permanent tax structure for investments in the Commonwealth of Puerto Rico and the possessions of the United States, 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; AMENDMENT OF 1986 CODE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Economic Revitalization Tax Act of 2001”.

6 (b) AMENDMENT OF 1986 CODE.—Except as other-
7 wise expressly provided, whenever in this Act an amend-
8 ment or repeal is expressed in terms of an amendment

1 to, or repeal of, a section or other provision, the reference
 2 shall be considered to be made to a section or other provi-
 3 sion of the Internal Revenue Code of 1986.

4 **SEC. 2. CERTAIN INVESTMENTS IN UNITED STATES PROP-**
 5 **ERTY BY QUALIFIED POSSESSIONS CORPORA-**
 6 **TIONS.**

7 (a) IN GENERAL.—Section 956 (relating to invest-
 8 ment of earnings in United States property) is amended
 9 by redesignating subsection (e) as subsection (f) and in-
 10 serting after subsection (d) the following:

11 “(e) SEPARATE APPLICATION OF SECTION TO QUALI-
 12 FIED POSSESSIONS CORPORATIONS.—

13 “(1) IN GENERAL.—In the case of a qualified
 14 possessions corporation, this section shall be applied
 15 separately with respect to such corporation’s quali-
 16 fied possessions income.

17 “(2) DEFINITIONS.—For purposes of this
 18 section—

19 “(A) QUALIFIED POSSESSIONS CORPORA-
 20 TION.—The term ‘qualified possessions corpora-
 21 tion’ means any foreign corporation which is a
 22 controlled foreign corporation and is created or
 23 organized under the laws of the Commonwealth
 24 of Puerto Rico or a possession of the United
 25 States.

1 “(B) QUALIFIED POSSESSIONS INCOME.—

2 The term ‘qualified possessions income’ means
 3 income earned by a qualified possessions cor-
 4 poration in taxable years beginning after De-
 5 cember 31, 2001, from sources outside the
 6 United States, from—

7 “(i) the active conduct of a trade or
 8 business within the Commonwealth of
 9 Puerto Rico or a possession of the United
 10 States, or

11 “(ii) the sale or exchange of substan-
 12 tially all of the assets used in the active
 13 conduct of such a trade or business.

14 “(3) TAXABLE YEARS TO WHICH SUBSECTION
 15 IS APPLICABLE.—This subsection shall be applicable
 16 with respect to any taxable year of a qualified pos-
 17 sessions corporation beginning after December 31,
 18 2001, for which an election under section 245(d) is
 19 not in effect.”.

20 (b) CERTAIN INVESTMENTS IN UNITED STATES
 21 PROPERTY.—Section 951(a) (relating to amounts in-
 22 cluded in gross income of United States shareholders) is
 23 amended by adding at the end the following:

24 “(4) CERTAIN INVESTMENTS IN UNITED
 25 STATES PROPERTY.—

1 “(A) IN GENERAL.—The amount deter-
2 mined under paragraph (1)(B) with respect to
3 a qualified possessions corporation (as defined
4 in section 956(e)(2)(A)) shall be reduced (but
5 not below zero) by the lesser of—

6 “(i) 90 percent of the amount deter-
7 mined under section 956(e) with respect to
8 such corporation for the taxable year, or

9 “(ii) 90 percent of such corporation’s
10 cumulative qualified possessions income (as
11 defined in section 956(e)(2)(B)), reduced
12 by amounts (if any) previously allowed as
13 a deduction under section 245(d).

14 “(B) SUCCEEDING TAXABLE YEARS.—In
15 applying this section and section 956 to any
16 taxable year, any amount not included in the
17 gross income of a United States shareholder of
18 a qualified possessions corporation in a prior
19 taxable year solely by reason of the application
20 of subparagraph (A) shall be treated as if it
21 had been so included in the gross income of the
22 United States shareholder in such prior taxable
23 year.”.

1 **SEC. 3. DIVIDENDS RECEIVED DEDUCTION WITH RESPECT**
2 **TO CERTAIN DISTRIBUTIONS BY QUALIFIED**
3 **POSSESSIONS CORPORATIONS.**

4 Section 245 (relating to dividends received from cer-
5 tain foreign corporations) is amended by adding at the end
6 the following:

7 “(d) DIVIDENDS FROM QUALIFIED POSSESSIONS
8 CORPORATIONS.—

9 “(1) GENERAL RULE.—In the case of a divi-
10 dend described in paragraph (2) received by a do-
11 mestic corporation from an electing qualified posses-
12 sions corporation (as defined in section
13 956(e)(2)(A)), there shall be allowed as a deduction
14 an amount equal to 85 percent of such dividend.

15 “(2) ELIGIBLE DIVIDENDS.—A dividend is de-
16 scribed in this paragraph if such dividend is paid out
17 of that portion of the earnings and profits of a
18 qualified possessions corporation which does not ex-
19 ceed such corporation’s accumulated qualified pos-
20 sessions income (as defined in section 956(e)(2)(B)).

21 “(3) ELECTIONS.—

22 “(A) IN GENERAL.—An election under this
23 subsection shall be made by the qualified pos-
24 sessions corporation at such time and in such
25 manner as the Secretary shall prescribe.

“(B) YEARS FOR WHICH ELECTION IS EFFECTIVE.—An election under this subsection shall be effective for the taxable year of the qualified possessions corporation beginning after December 31, 2001, for which such election is made and for all succeeding taxable years of such corporation, unless—

“(i) the corporation ceases to be a qualified possessions corporation, or

“(ii) the corporation revokes the election.

“(C) NEW ELECTION BY QUALIFIED POSSESSIONS CORPORATION FOLLOWING TERMINATION.—If a qualified possessions corporation has made an election under this subsection and if such election has been terminated under subparagraph (B), such corporation (and any successor qualified possessions corporation) shall not be eligible to make an election under this subsection for any taxable year before the 5th taxable year which begins after the 1st taxable year for which such termination is effective, unless the Secretary consents to such election.”.

1 **SEC. 4. SAFE HARBOR RULE FOR CERTAIN TRANSFERS OR**
 2 **LICENSES OF INTANGIBLE PROPERTY TO A**
 3 **QUALIFIED POSSESSIONS CORPORATION.**

4 Section 367 (relating to foreign corporations) is
 5 amended by adding at the end the following:

6 “(g) SAFE HARBOR FOR CERTAIN TRANSFERS OR
 7 LICENSES OF INTANGIBLE PROPERTY.—

8 “(1) GENERAL RULE.—If subsection
 9 (d)(2)(A)(ii) or section 482 is otherwise applicable to
 10 the transfer or license of qualified intangible prop-
 11 erty to an electing qualified possessions corporation
 12 (as defined in section 956(e)(2)(A)), the require-
 13 ments of subsection (d)(2)(A)(ii) or section 482, as
 14 the case may be, shall be treated as satisfied for all
 15 purposes under this subtitle for any taxable year for
 16 which the electing qualified possessions corporation
 17 computes its qualified possessions income (as defined
 18 in section 956(e)(2)(B)) with respect to its products
 19 or services involving the use of the qualified intan-
 20 gible property in accordance with the same method
 21 specified in section 936(h) (as in effect on the date
 22 of the enactment of this subsection) which was used
 23 by the domestic corporation referred to in paragraph
 24 (2)(A) for its last taxable year beginning before the
 25 transfer or license to the qualified possessions cor-
 26 poration.

1 “(2) DEFINITIONS.—For purposes of this
2 subsection—

3 “(A) QUALIFIED INTANGIBLE PROP-
4 ERTY.—The term ‘qualified intangible property’
5 means any intangible property owned by a do-
6 mestic corporation on the date of the enactment
7 of this section, but only if such property was—

8 “(i) developed or purchased by the do-
9 mestic corporation, and

10 “(ii) used directly in the active con-
11 duct by the domestic corporation of a trade
12 or business for which credits were allowed
13 under either section 30A or 936 for the
14 taxable year within which the transfer or
15 license occurs.

16 “(B) INTANGIBLE PROPERTY.—The term
17 ‘intangible property’ means any intangible prop-
18 erty (within the meaning of subsection (d)) but
19 only if such property was used directly in con-
20 nection with a manufacturing or similar process
21 within the taxable year referred to in paragraph
22 (2)(A)(ii).

23 “(3) ELECTION.—

24 “(A) IN GENERAL.—An election under this
25 subsection shall be made by the qualified pos-

1 sessions corporation, in such manner as the
 2 Secretary may prescribe by regulations, prior to
 3 the 15th day of the 3d month following the
 4 close of the first taxable year of such corpora-
 5 tion beginning after December 31, 2001.

6 “(B) YEARS FOR WHICH EFFECTIVE.—An
 7 election under this subsection shall apply to the
 8 taxable year for which made and all subsequent
 9 years unless—

10 “(i) the foreign corporation which is
 11 the transferee or licensee ceases to be a
 12 qualified possessions corporation, or

13 “(ii) the Secretary consents to the
 14 revocation of the election.”.

15 **SEC. 5. TECHNICAL AND CONFORMING CHANGES.**

16 (a) IMPUTED INTEREST.—Notwithstanding any pro-
 17 vision of the Internal Revenue Code of 1986, no interest
 18 shall be imputed for any purpose under such Code with
 19 respect to any obligation issued to a qualified possessions
 20 corporation (as defined in section 956(e)(2)(A) of such
 21 Code, as added by section 2(a)) as part of a transaction
 22 to which section 956(e) of such Code (as so added) is ap-
 23 plicable.

24 (b) CONSTRUCTIVE DIVIDENDS.—Notwithstanding
 25 any provision of the Internal Revenue Code of 1986, no

1 amount of United States property held by a qualified pos-
2 sessions corporation (as defined in such section 956(e))
3 pursuant to sections 951(a)(4) and 956(e) of such Code
4 shall be treated as a dividend for any purpose under such
5 Code.

6 **SEC. 6. EFFECTIVE DATE.**

7 The amendments made by this Act shall take effect
8 on the date of the enactment of this Act.

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