

108TH CONGRESS
1ST SESSION

S. 1964

To amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 25, 2003

Ms. STABENOW (for herself and Mr. GRAHAM of South Carolina) 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 comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in 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 “Manufacturing Opportunities to Revitalize our Econo-
6 my’s JOBS Act” or the “MORE JOBS Act”.

1 (b) AMENDMENT OF 1986 CODE.—Except as other-
 2 wise expressly provided, whenever in this Act an amend-
 3 ment or repeal is expressed in terms of an amendment
 4 to, or repeal of, a section or other provision, the reference
 5 shall be considered to be made to a section or other provi-
 6 sion of the Internal Revenue Code of 1986.

7 **SEC. 2. REPEAL OF EXCLUSION FOR EXTRATERRITORIAL**
 8 **INCOME.**

9 (a) IN GENERAL.—Section 114 is hereby repealed.

10 (b) CONFORMING AMENDMENTS.—

11 (1)(A) Subpart E of part III of subchapter N
 12 of chapter 1 (relating to qualifying foreign trade in-
 13 come) is hereby repealed.

14 (B) The table of subparts for such part III is
 15 amended by striking the item relating to subpart E.

16 (2) The table of sections for part III of sub-
 17 chapter B of chapter 1 is amended by striking the
 18 item relating to section 114.

19 (3) The second sentence of section
 20 56(g)(4)(B)(i) is amended by striking “or under sec-
 21 tion 114”.

22 (4) Section 275(a) is amended—

23 (A) by inserting “or” at the end of para-
 24 graph (4)(A), by striking “or” at the end of

1 paragraph (4)(B) and inserting a period, and
 2 by striking subparagraph (C), and

3 (B) by striking the last sentence.

4 (5) Paragraph (3) of section 864(e) is amend-
 5 ed—

6 (A) by striking:

7 “(3) TAX-EXEMPT ASSETS NOT TAKEN INTO
 8 ACCOUNT.—

9 “(A) IN GENERAL.—For purposes of”; and
 10 inserting:

11 “(3) TAX-EXEMPT ASSETS NOT TAKEN INTO
 12 ACCOUNT.—For purposes of”, and

13 (B) by striking subparagraph (B).

14 (6) Section 903 is amended by striking “114,
 15 164(a),” and inserting “164(a)”.

16 (7) Section 999(c)(1) is amended by striking
 17 “941(a)(5),”.

18 (c) EFFECTIVE DATE.—

19 (1) IN GENERAL.—The amendments made by
 20 this section shall apply to transactions occurring
 21 after the date of the enactment of this Act.

22 (2) BINDING CONTRACTS.—The amendments
 23 made by this section shall not apply to any trans-
 24 action in the ordinary course of a trade or business
 25 which occurs pursuant to a binding contract—

1 (A) which is between the taxpayer and a
2 person who is not a related person (as defined
3 in section 943(b)(3) of such Code, as in effect
4 on the day before the date of the enactment of
5 this Act), and

6 (B) which is in effect on September 17,
7 2003, and at all times thereafter.

8 (d) REVOCATION OF SECTION 943(e) ELECTIONS.—

9 (1) IN GENERAL.—In the case of a corporation
10 that elected to be treated as a domestic corporation
11 under section 943(e) of the Internal Revenue Code
12 of 1986 (as in effect on the day before the date of
13 the enactment of this Act)—

14 (A) the corporation may, during the 1-year
15 period beginning on the date of the enactment
16 of this Act, revoke such election, effective as of
17 such date of enactment, and

18 (B) if the corporation does revoke such
19 election—

20 (i) such corporation shall be treated
21 as a domestic corporation transferring (as
22 of such date of enactment) all of its prop-
23 erty to a foreign corporation in connection
24 with an exchange described in section 354
25 of such Code, and

1 (ii) no gain or loss shall be recognized
2 on such transfer.

3 (2) EXCEPTION.—Subparagraph (B)(ii) of
4 paragraph (1) shall not apply to gain on any asset
5 held by the revoking corporation if—

6 (A) the basis of such asset is determined
7 in whole or in part by reference to the basis of
8 such asset in the hands of the person from
9 whom the revoking corporation acquired such
10 asset,

11 (B) the asset was acquired by transfer (not
12 as a result of the election under section 943(e)
13 of such Code) occurring on or after the 1st day
14 on which its election under section 943(e) of
15 such Code was effective, and

16 (C) a principal purpose of the acquisition
17 was the reduction or avoidance of tax (other
18 than a reduction in tax under section 114 of
19 such Code, as in effect on the day before the
20 date of the enactment of this Act).

21 (e) GENERAL TRANSITION.—

22 (1) IN GENERAL.—In the case of a taxable year
23 ending after the date of the enactment of this Act
24 and beginning before January 1, 2007, for purposes
25 of chapter 1 of such Code, a current FSC/ETI bene-

ficiary shall be allowed a deduction equal to the transition amount determined under this subsection with respect to such beneficiary for such year.

(2) CURRENT FSC/ETI BENEFICIARY.—The term “current FSC/ETI beneficiary” means any corporation which entered into one or more transactions during its taxable year beginning in calendar year 2002 with respect to which FSC/ETI benefits were allowable.

(3) TRANSITION AMOUNT.—For purposes of this subsection—

(A) IN GENERAL.—The transition amount applicable to any current FSC/ETI beneficiary for any taxable year is the phaseout percentage of the base period amount.

(B) PHASEOUT PERCENTAGE.—

(i) IN GENERAL.—In the case of a taxpayer using the calendar year as its taxable year, the phaseout percentage shall be determined under the following table:

Years:	The phaseout percentage is:
2004	80
2005	80
2006	60.

(ii) SPECIAL RULE FOR 2003.—The phaseout percentage for 2003 shall be the amount that bears the same ratio to 100

percent as the number of days after the date of the enactment of this Act bears to 365.

(iii) SPECIAL RULE FOR FISCAL YEAR TAXPAYERS.—In the case of a taxpayer not using the calendar year as its taxable year, the phaseout percentage is the weighted average of the phaseout percentages determined under the preceding provisions of this paragraph with respect to calendar years any portion of which is included in the taxpayer’s taxable year. The weighted average shall be determined on the basis of the respective portions of the taxable year in each calendar year.

“(C) SHORT TAXABLE YEAR.—The Secretary shall prescribe guidance for the computation of the transition amount in the case of a short taxable year.

(4) BASE PERIOD AMOUNT.—For purposes of this subsection, the base period amount is the FSC/ETI benefit for the taxpayer’s taxable year beginning in calendar year 2002.

(5) FSC/ETI BENEFIT.—For purposes of this subsection, the term “FSC/ETI benefit” means—

1 (A) amounts excludable from gross income
 2 under section 114 of such Code, and

3 (B) the exempt foreign trade income of re-
 4 lated foreign sales corporations from property
 5 acquired from the taxpayer (determined without
 6 regard to section 923(a)(5) of such Code (relat-
 7 ing to special rule for military property), as in
 8 effect on the day before the date of the enact-
 9 ment of the FSC Repeal and Extraterritorial
 10 Income Exclusion Act of 2000).

11 In determining the FSC/ETI benefit there shall be
 12 excluded any amount attributable to a transaction
 13 with respect to which the taxpayer is the lessor un-
 14 less the leased property was manufactured or pro-
 15 duced in whole or in significant part by the tax-
 16 payer.

17 (6) SPECIAL RULE FOR AGRICULTURAL AND
 18 HORTICULTURAL COOPERATIVES.—Determinations
 19 under this subsection with respect to an organization
 20 described in section 943(g)(1) of such Code, as in
 21 effect on the day before the date of the enactment
 22 of this Act, shall be made at the cooperative level
 23 and the purposes of this subsection shall be carried
 24 out in a manner similar to section 199(h)(2) of such
 25 Code, as added by this Act. Such determinations

1 shall be in accordance with such requirements and
2 procedures as the Secretary may prescribe.

3 (7) CERTAIN RULES TO APPLY.—Rules similar
4 to the rules of section 41(f) of such Code shall apply
5 for purposes of this subsection.

6 (8) COORDINATION WITH BINDING CONTRACT
7 RULE.—The deduction determined under paragraph
8 (1) for any taxable year shall be reduced by the
9 phaseout percentage of any FSC/ETI benefit real-
10 ized for the taxable year by reason of subsection
11 (c)(2) or section 5(c)(1)(B) of the FSC Repeal and
12 Extraterritorial Income Exclusion Act of 2000, ex-
13 cept that for purposes of this paragraph the phase-
14 out percentage for 2003 shall be treated as being
15 equal to 100 percent.

16 (9) SPECIAL RULE FOR TAXABLE YEAR WHICH
17 INCLUDES DATE OF ENACTMENT.—In the case of a
18 taxable year which includes the date of the enact-
19 ment of this Act, the deduction allowed under this
20 subsection to any current FSC/ETI beneficiary shall
21 in no event exceed—

22 (A) 100 percent of such beneficiary's base
23 period amount for calendar year 2003, reduced
24 by

1 (B) the FSC/ETI benefit of such bene-
 2 ficiary with respect to transactions occurring
 3 during the portion of the taxable year ending on
 4 the date of the enactment of this Act.

5 **SEC. 3. DEDUCTION RELATING TO INCOME ATTRIBUTABLE**
 6 **TO UNITED STATES PRODUCTION ACTIVI-**
 7 **TIES.**

8 (a) IN GENERAL.—Part VI of subchapter B of chap-
 9 ter 1 (relating to itemized deductions for individuals and
 10 corporations) is amended by adding at the end the fol-
 11 lowing new section:

12 **“SEC. 199. INCOME ATTRIBUTABLE TO DOMESTIC PRODUC-**
 13 **TION ACTIVITIES.**

14 “(a) ALLOWANCE OF DEDUCTION.—There shall be
 15 allowed as a deduction an amount equal to 9 percent of
 16 the qualified production activities income of the taxpayer
 17 for the taxable year.

18 “(b) DEDUCTION LIMITED TO WAGES PAID.—

19 “(1) IN GENERAL.—The amount of the deduc-
 20 tion allowable under subsection (a) for any taxable
 21 year shall not exceed 50 percent of the W–2 wages
 22 of the employer for the taxable year.

23 “(2) W–2 WAGES.—For purposes of paragraph
 24 (1), the term ‘W–2 wages’ means the sum of the ag-
 25 gregate amounts the taxpayer is required to include

1 on statements under paragraphs (3) and (8) of sec-
2 tion 6051(a) with respect to employment of employ-
3 ees of the taxpayer during the taxpayer's taxable
4 year.

5 “(3) SPECIAL RULES.—

6 “(A) PASS-THRU ENTITIES.—In the case
7 of an S corporation, partnership, estate or
8 trust, or other pass-thru entity, the limitation
9 under this subsection shall apply at the entity
10 level.

11 “(B) ACQUISITIONS AND DISPOSITIONS.—

12 The Secretary shall provide for the application
13 of this subsection in cases where the taxpayer
14 acquires, or disposes of, the major portion of a
15 trade or business or the major portion of a sep-
16 arate unit of a trade or business during the tax-
17 able year.

18 “(c) QUALIFIED PRODUCTION ACTIVITIES IN-

19 COME.—For purposes of this section, the term ‘qualified
20 production activities income’ means an amount equal to
21 the product of—

22 “(1) the portion of the modified taxable income
23 of the taxpayer which is attributable to domestic
24 production activities, and

25 “(2) the domestic/worldwide fraction.

1 “(d) DETERMINATION OF INCOME ATTRIBUTABLE
2 TO DOMESTIC PRODUCTION ACTIVITIES.—For purposes
3 of this section—

4 “(1) IN GENERAL.—The portion of the modified
5 taxable income which is attributable to domestic pro-
6 duction activities is so much of the modified taxable
7 income for the taxable year as does not exceed—

8 “(A) the taxpayer’s domestic production
9 gross receipts for such taxable year, reduced by

10 “(B) the sum of—

11 “(i) the costs of goods sold that are
12 allocable to such receipts,

13 “(ii) other deductions, expenses, or
14 losses directly allocable to such receipts,
15 and

16 “(iii) a proper share of other deduc-
17 tions, expenses, and losses that are not di-
18 rectly allocable to such receipts or another
19 class of income.

20 “(2) ALLOCATION METHOD.—The Secretary
21 shall prescribe rules for the proper allocation of
22 items of income, deduction, expense, and loss for
23 purposes of determining income attributable to do-
24 mestic production activities.

1 “(3) SPECIAL RULES FOR DETERMINING
2 COSTS.—

3 “(A) IN GENERAL.—For purposes of deter-
4 mining costs under clause (i) of paragraph
5 (1)(B), any item or service brought into the
6 United States shall be treated as acquired by
7 purchase, and its cost shall be treated as not
8 less than its fair market value immediately
9 after it entered the United States. A similar
10 rule shall apply in determining the adjusted
11 basis of leased or rented property where the
12 lease or rental gives rise to domestic production
13 gross receipts.

14 “(B) EXPORTS FOR FURTHER MANUFAC-
15 TURE.—In the case of any property described
16 in subparagraph (A) that had been exported by
17 the taxpayer for further manufacture, the in-
18 crease in cost or adjusted basis under subpara-
19 graph (A) shall not exceed the difference be-
20 tween the value of the property when exported
21 and the value of the property when brought
22 back into the United States after the further
23 manufacture.

24 “(4) MODIFIED TAXABLE INCOME.—The term
25 ‘modified taxable income’ means taxable income

1 computed without regard to the deduction allowable
2 under this section.

3 “(e) DOMESTIC PRODUCTION GROSS RECEIPTS.—

4 For purposes of this section—

5 “(1) IN GENERAL.—The term ‘domestic produc-
6 tion gross receipts’ means the gross receipts of the
7 taxpayer which are derived from—

8 “(A) any sale, exchange, or other disposi-
9 tion of, or

10 “(B) any lease, rental, or license of—
11 qualifying production property which was manufac-
12 tured, produced, grown, or extracted in whole or in
13 significant part by the taxpayer within the United
14 States.

15 “(2) SPECIAL RULES FOR CERTAIN PROP-
16 ERTY.—In the case of any qualifying production
17 property described in subsection (f)(1)(C)—

18 “(A) such property shall be treated for
19 purposes of paragraph (1) as produced in sig-
20 nificant part by the taxpayer within the United
21 States if more than 50 percent of the aggregate
22 development and production costs are incurred
23 by the taxpayer within the United States, and

24 “(B) if a taxpayer acquires such property
25 before such property begins to generate sub-

1 stantial gross receipts, any development or pro-
 2 duction costs incurred before the acquisition
 3 shall be treated as incurred by the taxpayer for
 4 purposes of subparagraph (A) and paragraph
 5 (1).

6 “(f) QUALIFYING PRODUCTION PROPERTY.—For
 7 purposes of this section—

8 “(1) IN GENERAL.—Except as otherwise pro-
 9 vided in this paragraph, the term ‘qualifying produc-
 10 tion property’ means—

11 “(A) any tangible personal property,

12 “(B) any computer software, and

13 “(C) any property described in section
 14 168(f) (3) or (4), including any underlying
 15 copyright or trademark.

16 “(2) EXCLUSIONS FROM QUALIFYING PRODUC-
 17 TION PROPERTY.—The term ‘qualifying production
 18 property’ shall not include—

19 “(A) consumable property that is sold,
 20 leased, or licensed by the taxpayer as an inte-
 21 gral part of the provision of services,

22 “(B) oil or gas,

23 “(C) electricity,

24 “(D) water supplied by pipeline to the con-
 25 sumer,

1 “(E) utility services, or

2 “(F) any film, tape, recording, book, mag-
 3 azine, newspaper, or similar property the mar-
 4 ket for which is primarily topical or otherwise
 5 essentially transitory in nature.

6 “(g) DOMESTIC/WORLDWIDE FRACTION.—For pur-
 7 poses of this section—

8 “(1) IN GENERAL.—The term ‘domestic/world-
 9 wide fraction’ means a fraction (not greater than
 10 1)—

11 “(A) the numerator of which is the value
 12 of the domestic production of the taxpayer, and

13 “(B) the denominator of which is the value
 14 of the worldwide production of the taxpayer.

15 “(2) VALUE OF DOMESTIC PRODUCTION.—The
 16 value of domestic production is the excess (if any)
 17 of—

18 “(A) the domestic production gross re-
 19 ceipts, over

20 “(B) the cost of purchased inputs allocable
 21 to such receipts that are deductible under this
 22 chapter for the taxable year.

23 “(3) PURCHASED INPUTS.—

1 “(A) IN GENERAL.—Purchased inputs are
2 any of the following items acquired by pur-
3 chase:

4 “(i) Services (other than services of
5 employees) used in manufacture, produc-
6 tion, growth, or extraction activities.

7 “(ii) Items consumed in connection
8 with such activities.

9 “(iii) Items incorporated as part of
10 the property being manufactured, pro-
11 duced, grown, or extracted.

12 “(B) SPECIAL RULE.—Rules similar to the
13 rules of subsection (d)(3) shall apply for pur-
14 poses of this subsection.

15 “(4) VALUE OF WORLDWIDE PRODUCTION.—

16 “(A) IN GENERAL.—The value of world-
17 wide production shall be determined under the
18 principles of paragraph (2), except that—

19 “(i) worldwide production gross re-
20 ceipts shall be taken into account, and

21 “(ii) paragraph (3)(B) shall not apply.

22 “(B) WORLDWIDE PRODUCTION GROSS RE-
23 CEIPTS.—The worldwide production gross re-
24 ceipts is the amount that would be determined
25 under subsection (e) if such subsection were ap-

1 plied without any reference to the United
2 States.

3 “(h) DEFINITIONS AND SPECIAL RULES.—

4 “(1) APPLICATION OF SECTION TO PASS-THRU
5 ENTITIES.—In the case of an S corporation, partner-
6 ship, estate or trust, or other pass-thru entity—

7 “(A) subject to the provisions of paragraph
8 (2) and subsection (b)(3)(A), this section shall
9 be applied at the shareholder, partner, or simi-
10 lar level, and

11 “(B) the Secretary shall prescribe rules for
12 the application of this section, including rules
13 relating to—

14 “(i) restrictions on the allocation of
15 the deduction to taxpayers at the partner
16 or similar level, and

17 “(ii) additional reporting require-
18 ments.

19 “(2) EXCLUSION FOR PATRONS OF AGRICUL-
20 TURAL AND HORTICULTURAL COOPERATIVES.—

21 “(A) IN GENERAL.—If any amount de-
22 scribed in paragraph (1) or (3) of section 1385
23 (a)—

24 “(i) is received by a person from an
25 organization to which part I of subchapter

1 T applies which is engaged in the mar-
 2 keting of agricultural or horticultural prod-
 3 ucts, and

4 “(ii) is allocable to the portion of the
 5 qualified production activities income of
 6 the organization which is deductible under
 7 subsection (a) and designated as such by
 8 the organization in a written notice mailed
 9 to its patrons during the payment period
 10 described in section 1382(d)—

11 then such person shall be allowed an exclusion
 12 from gross income with respect to such amount.
 13 The taxable income of the organization shall
 14 not be reduced under section 1382 by the por-
 15 tion of any such amount with respect to which
 16 an exclusion is allowable to a person by reason
 17 of this paragraph.

18 “(B) SPECIAL RULES.—For purposes of
 19 applying subparagraph (A), in determining the
 20 qualified production activities income of the or-
 21 ganization under this section—

22 “(i) there shall not be taken into ac-
 23 count in computing the organization’s
 24 modified taxable income any deduction al-
 25 lowable under subsection (b) or (c) of sec-

tion 1382 (relating to patronage dividends,
per-unit retain allocations, and nonpatron-
age distributions), and

“(ii) the organization shall be treated
as having manufactured, produced, grown,
or extracted in whole or significant part
any qualifying production property mar-
keted by the organization which its patrons
have so manufactured, produced, grown, or
extracted.

“(3) SPECIAL RULE FOR AFFILIATED
GROUPS.—

“(A) IN GENERAL.—All members of an ex-
panded affiliated group shall be treated as a
single corporation for purposes of this section.

“(B) EXPANDED AFFILIATED GROUP.—
The term ‘expanded affiliated group’ means an
affiliated group as defined in section 1504(a),
determined—

“(i) by substituting ‘50 percent’ for
‘80 percent’ each place it appears, and

“(ii) without regard to paragraphs (2)
and (4) of section 1504(b).

For purposes of determining the domestic/
worldwide fraction under subsection (g), clause

1 (ii) shall be applied by also disregarding para-
 2 graphs (3) and (8) of section 1504(b).

3 “(4) COORDINATION WITH MINIMUM TAX.—The
 4 deduction under this section shall be allowed for
 5 purposes of the tax imposed by section 55; except
 6 that for purposes of section 55, alternative minimum
 7 taxable income shall be taken into account in deter-
 8 mining the deduction under this section.

9 “(5) ORDERING RULE.—The amount of any
 10 other deduction allowable under this chapter shall be
 11 determined as if this section had not been enacted.

12 “(6) TRADE OR BUSINESS REQUIREMENT.—
 13 This section shall be applied by only taking into ac-
 14 count items which are attributable to the actual con-
 15 duct of a trade or business.

16 “(7) POSSESSIONS, ETC.—

17 “(A) IN GENERAL.—For purposes of sub-
 18 sections (d) and (e), the term ‘United States’
 19 includes the Commonwealth of Puerto Rico,
 20 Guam, American Samoa, the Commonwealth of
 21 the Northern Mariana Islands, and the Virgin
 22 Islands of the United States.

23 “(B) SPECIAL RULES FOR APPLYING WAGE
 24 LIMITATION.—For purposes of applying the

1 limitation under subsection (b) for any taxable
2 year—

3 “(i) the determination of W-2 wages
4 of a taxpayer shall be made without regard
5 to any exclusion under section 3401(a)(8)
6 for remuneration paid for services per-
7 formed in a jurisdiction described in sub-
8 paragraph (A), and

9 “(ii) in determining the amount of
10 any credit allowable under section 30A or
11 936 for the taxable year, there shall not be
12 taken into account any wages which are
13 taken into account in applying such limita-
14 tion.

15 “(8) COORDINATION WITH TRANSITION
16 RULES.—For purposes of this section—

17 “(A) domestic production gross receipts
18 shall not include gross receipts from any trans-
19 action if the binding contract transition relief of
20 section 2(c)(2) of the MORE JOBS Act applies
21 to such transaction, and

22 “(B) any deduction allowed under section
23 2(e) of such Act shall be disregarded in deter-
24 mining the portion of the taxable income which

1 is attributable to domestic production gross re-
 2 ceipts.”.

3 (b) MINIMUM TAX.—Section 56(g)(4)(C) (relating to
 4 disallowance of items not deductible in computing earnings
 5 and profits) is amended by adding at the end the following
 6 new clause:

7 “(v) DEDUCTION FOR DOMESTIC PRO-
 8 Duction.—Clause (i) shall not apply to
 9 any amount allowable as a deduction under
 10 section 199.”.

11 (c) CLERICAL AMENDMENT.—The table of sections
 12 for part VI of subchapter B of chapter 1 is amended by
 13 adding at the end the following new item:

“Sec. 199. Income attributable to domestic production activi-
 ties.”.

14 (d) EFFECTIVE DATE.—

15 (1) IN GENERAL.—The amendments made by
 16 this section shall apply to taxable years ending after
 17 the date of the enactment of this Act.

18 (2) APPLICATION OF SECTION 15.—Section 15
 19 of the Internal Revenue Code of 1986 shall apply to
 20 the amendments made by this section as if they were
 21 changes in a rate of tax.

