

108TH CONGRESS
1ST SESSION

S. 384

To amend the Internal Revenue Code of 1986 to prevent corporate expatriation to avoid United States income taxes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 12, 2003

Mr. REID (for himself, Mr. LEVIN, Mr. DURBIN, and Mr. KENNEDY) 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 prevent corporate expatriation to avoid United States income taxes.

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 Patriot En-
5 forcement Act of 2003”.

6 **SEC. 2. PREVENTION OF CORPORATE EXPATRIATION TO**
7 **AVOID UNITED STATES INCOME TAX.**

8 (a) IN GENERAL.—Paragraph (4) of section 7701(a)
9 of the Internal Revenue Code of 1986 (defining domestic)
10 is amended to read as follows:

1 “(4) DOMESTIC.—

2 “(A) IN GENERAL.—Except as provided in
3 subparagraph (B), the term ‘domestic’ when ap-
4 plied to a corporation or partnership means cre-
5 ated or organized in the United States or under
6 the law of the United States or of any State
7 unless, in the case of a partnership, the Sec-
8 retary provides otherwise by regulations.

9 “(B) CERTAIN CORPORATIONS TREATED
10 AS DOMESTIC.—

11 “(i) IN GENERAL.—The acquiring cor-
12 poration in a corporate expatriation trans-
13 action shall be treated as a domestic cor-
14 poration.

15 “(ii) CORPORATE EXPATRIATION
16 TRANSACTION.—For purposes of this sub-
17 paragraph, the term ‘corporate expatria-
18 tion transaction’ means any transaction
19 if—

20 “(I) a nominally foreign corpora-
21 tion (referred to in this subparagraph
22 as the ‘acquiring corporation’) ac-
23 quires, as a result of such transaction,
24 directly or indirectly substantially all

1 of the properties held directly or indi-
2 rectly by a domestic corporation, and

3 “(II) immediately after the trans-
4 action, more than 80 percent of the
5 stock (by vote or value) of the acquir-
6 ing corporation is held by former
7 shareholders of the domestic corpora-
8 tion by reason of holding stock in the
9 domestic corporation.

10 “(iii) LOWER STOCK OWNERSHIP RE-
11 QUIREMENT IN CERTAIN CASES.—Sub-
12 clause (II) of clause (ii) shall be applied by
13 substituting ‘50 percent’ for ‘80 percent’
14 with respect to any nominally foreign cor-
15 poration if—

16 “(I) such corporation does not
17 have substantial business activities
18 (when compared to the total business
19 activities of the expanded affiliated
20 group) in the foreign country in which
21 or under the law of which the corpora-
22 tion is created or organized, and

23 “(II) the stock of the corporation
24 is publicly traded and the principal

1 market for the public trading of such
2 stock is in the United States.

3 “(iv) PARTNERSHIP TRANSACTIONS.—

4 The term ‘corporate expatriation trans-
5 action’ includes any transaction if—

6 “(I) a nominally foreign corpora-
7 tion (referred to in this subparagraph
8 as the ‘acquiring corporation’) ac-
9 quires, as a result of such transaction,
10 directly or indirectly properties consti-
11 tuting a trade or business of a domes-
12 tic partnership,

13 “(II) immediately after the trans-
14 action, more than 80 percent of the
15 stock (by vote or value) of the acquir-
16 ing corporation is held by former
17 partners of the domestic partnership
18 or related foreign partnerships (deter-
19 mined without regard to stock of the
20 acquiring corporation which is sold in
21 a public offering related to the trans-
22 action), and

23 “(III) the acquiring corporation
24 meets the requirements of subclauses
25 (I) and (II) of clause (iii).

1 “(v) SPECIAL RULES.—For purposes
2 of this subparagraph—

3 “(I) a series of related trans-
4 actions shall be treated as 1 trans-
5 action, and

6 “(II) stock held by members of
7 the expanded affiliated group which
8 includes the acquiring corporation
9 shall not be taken into account in de-
10 termining ownership.

11 “(vi) OTHER DEFINITIONS.—For pur-
12 poses of this subparagraph—

13 “(I) NOMINALLY FOREIGN COR-
14 PORATION.—The term ‘nominally for-
15 eign corporation’ means any corpora-
16 tion which would (but for this sub-
17 paragraph) be treated as a foreign
18 corporation.

19 “(II) EXPANDED AFFILIATED
20 GROUP.—The term ‘expanded affili-
21 ated group’ means an affiliated group
22 (as defined in section 1504(a) without
23 regard to section 1504(b)).

24 “(III) RELATED FOREIGN PART-
25 NERSHIP.—A foreign partnership is

1 related to a domestic partnership if
2 they are under common control (with-
3 in the meaning of section 482), or
4 they shared the same trademark or
5 tradename.”

6 (b) EFFECTIVE DATES.—

7 (1) IN GENERAL.—The amendment made by
8 this section shall apply to corporate expatriation
9 transactions completed after September 11, 2001.

10 (2) SPECIAL RULE.—The amendment made by
11 this section shall also apply to corporate expatriation
12 transactions completed on or before September 11,
13 2001, but only with respect to taxable years of the
14 acquiring corporation beginning after December 31,
15 2003.

○