

108TH CONGRESS
1ST SESSION

S. 513

To amend the Internal Revenue Code of 1986 and the Securities Exchange Act of 1934 to provide for the treatment of corporate expatriation transactions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 4, 2003

Mr. BAYH 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 and the Securities Exchange Act of 1934 to provide for the treatment of corporate expatriation transactions, 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 Tax Fair-
5 ness and Shareholder Rights Act of 2003”.

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

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

6 “(4) DOMESTIC.—

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

14 “(B) CERTAIN CORPORATIONS TREATED
15 AS DOMESTIC.—

16 “(i) IN GENERAL.—The acquiring cor-
17 poration in a corporate expatriation trans-
18 action shall be treated as a domestic cor-
19 poration.

20 “(ii) CORPORATE EXPATRIATION
21 TRANSACTION.—For purposes of this sub-
22 paragraph, the term ‘corporate expatria-
23 tion transaction’ means any transaction
24 if—

25 “(I) a nominally foreign corpora-
26 tion (referred to in this subparagraph

1 as the ‘acquiring corporation’) ac-
2 quires, as a result of such transaction,
3 directly or indirectly substantially all
4 of the properties held directly or indi-
5 rectly by a domestic corporation, and

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

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

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

1 “(II) the stock of the corporation
2 is publicly traded and the principal
3 market for the public trading of such
4 stock is in the United States.

5 “(iv) PARTNERSHIP TRANSACTIONS.—
6 The term ‘corporate expatriation trans-
7 action’ includes any transaction if—

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

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

1 “(III) the acquiring corporation
2 meets the requirements of subclauses
3 (I) and (II) of clause (iii).

4 “(v) SPECIAL RULES.—For purposes
5 of this subparagraph—

6 “(I) a series of related trans-
7 actions shall be treated as 1 trans-
8 action, and

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

14 “(vi) OTHER DEFINITIONS.—For pur-
15 poses of this subparagraph—

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

22 “(II) EXPANDED AFFILIATED
23 GROUP.—The term ‘expanded affili-
24 ated group’ means an affiliated group

1 (as defined in section 1504(a) without
2 regard to section 1504(b)).

3 “(III) RELATED FOREIGN PART-
4 NERSHIP.—A foreign partnership is
5 related to a domestic partnership if
6 they are under common control (with-
7 in the meaning of section 482), or
8 they shared the same trademark or
9 tradename.”.

10 (b) EFFECTIVE DATES.—

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

14 (2) SPECIAL RULE.—The amendment made by
15 this section shall also apply to corporate expatriation
16 transactions completed after December 31, 1996,
17 and before September 11, 2001, but only with re-
18 spect to taxable years of the acquiring corporation
19 beginning after December 31, 2003.

20 **SEC. 3. DISCLOSURE OF CORPORATE EXPATRIATION**
21 **TRANSACTIONS.**

22 (a) IN GENERAL.—Section 14 of the Securities Ex-
23 change Act of 1934 (15 U.S.C. 78n) is amended by adding
24 at the end the following new subsection:

1 “(i) PROXY SOLICITATIONS IN CONNECTION WITH
2 CORPORATE EXPATRIATION TRANSACTIONS.—

3 “(1) DISCLOSURE TO SHAREHOLDERS OF EF-
4 FECTS OF CORPORATE EXPATRIATION TRANS-
5 ACTION.—The Commission shall, by rule, require
6 that each domestic issuer shall prominently disclose,
7 as a separate and distinct document accompanying
8 each proxy statement relating to a corporate expa-
9 triation transaction—

10 “(A) the number of employees of the do-
11 mestic issuer that would be located in the new
12 foreign jurisdiction of incorporation or organi-
13 zation of that issuer upon completion of the
14 corporate expatriation transaction;

15 “(B) the percentage of the total assets of
16 the domestic issuer that would be located within
17 the new foreign jurisdiction of incorporation or
18 organization of that issuer upon completion of
19 the corporate expatriation transaction;

20 “(C) how the rights of holders of the secu-
21 rities of the domestic issuer would be impacted
22 by a completed corporate expatriation trans-
23 action;

24 “(D) that as a result of a completed cor-
25 porate expatriation transaction, any taxable

1 holder of the securities of the domestic issuer
2 shall be subject to the taxation of any capital
3 gains realized with respect to such securities;
4 and

5 “(E) the estimated tax benefit that would
6 be realized by the domestic issuer upon comple-
7 tion of the corporate expatriation transaction.

8 “(2) DISCLOSURE TO COMMISSION OF RESULTS
9 OF VOTE.—Upon the approval of any corporate ex-
10 patriation transaction by the holders of the securi-
11 ties of a domestic issuer, that issuer shall provide to
12 the Commission, in a form and manner to be deter-
13 mined by the Commission, information as to how
14 each holder of record of a voting security of that do-
15 mestic issuer (or a proxy there for) voted with re-
16 spect to the corporate expatriation transaction.

17 “(3) DEFINITIONS.—In this subsection, the fol-
18 lowing definitions shall apply:

19 “(A) CORPORATE EXPATRIATION TRANS-
20 ACTION.—The term ‘corporate expatriation
21 transaction’ means any transaction, or series of
22 related transactions, in which an entity orga-
23 nized under the laws of a foreign country ac-
24 quires, directly or indirectly, substantially all of

1 the voting securities in, or substantially all of
2 the assets of, a domestic issuer, and—

3 “(i) immediately after completion of
4 the transaction, more than 80 percent of
5 the securities (by vote or value) of the ac-
6 quiring foreign entity will be held by per-
7 sons that were security holders of the do-
8 mestic issuer immediately prior to the
9 transaction; or

10 “(ii) immediately after completion of
11 the transaction, more than 50 percent of
12 the securities (by vote or value) of the ac-
13 quiring foreign entity will be held by per-
14 sons that were security holders of the do-
15 mestic issuer immediately prior to the
16 transaction, and—

17 “(I) such foreign entity will not
18 have substantial business activities in
19 the foreign country in which it is or-
20 ganized; and

21 “(II) the securities of the foreign
22 entity will be publicly traded, and the
23 principal market for the public trad-
24 ing of such securities will be in the
25 United States.

1 “(B) DOMESTIC ISSUER.—The term ‘do-
2 mestic issuer’ means an issuer created or orga-
3 nized in the United States or under the law of
4 the United States or of any State.”.

5 (b) EFFECTIVE DATE.—Section 14(i) of the Securi-
6 ties Exchange Act of 1934 (as added by this section) shall
7 apply with respect to corporate expatriation transactions
8 (as defined in that section 14(i)) proposed on and after
9 the date of enactment of this Act.

10 **SEC. 4. MODIFICATIONS TO EXPENSING UNDER SECTION**

11 **179.**

12 (a) INCREASE OF AMOUNT WHICH MAY BE EX-
13 PENSED.—

14 (1) IN GENERAL.—Paragraph (1) of section
15 179(b) of the Internal Revenue Code of 1986 (relat-
16 ing to dollar limitation) is amended to read as fol-
17 lows:

18 “(1) DOLLAR LIMITATION.—The aggregate cost
19 which may be taken into account under subsection
20 (a) for any taxable year shall not exceed \$75,000
21 (\$25,000 in the case of taxable years beginning after
22 December 31, 2007).”.

23 (2) INCREASE IN PHASEOUT THRESHOLD.—
24 Paragraph (2) of section 179(b) of such Code is
25 amended by striking “\$200,000” and inserting

1 “\$325,000 (\$200,000 in the case of taxable years
2 beginning after December 31, 2007)”.

3 (b) **EFFECTIVE DATE.**—The amendments made by
4 this section shall apply to property placed in service in
5 taxable years beginning after December 31, 2002.

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