

109TH CONGRESS  
1ST SESSION

# H. R. 2911

To amend the Internal Revenue Code of 1986 to modify the active business definition under section 355.

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IN THE HOUSE OF REPRESENTATIVES

JUNE 15, 2005

Mr. CANTOR (for himself and Mr. TANNER) introduced the following bill;  
which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to modify  
the active business definition under section 355.

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. MODIFICATION OF ACTIVE BUSINESS DEFINI-**  
4       **TION UNDER SECTION 355.**

5       (a) IN GENERAL.—Section 355(b) of the Internal  
6       Revenue Code of 1986 (defining active conduct of a trade  
7       or business) is amended by adding at the end the following  
8       new paragraph:

9               “(3) SPECIAL RULES RELATING TO ACTIVE  
10       BUSINESS REQUIREMENT.—

1           “(A) IN GENERAL.—For purposes of deter-  
2           mining whether a corporation meets the re-  
3           quirement of paragraph (2)(A), all members of  
4           such corporation’s separate affiliated group  
5           shall be treated as one corporation. For pur-  
6           poses of the preceding sentence, a corporation’s  
7           separate affiliated group is the affiliated group  
8           which would be determined under section  
9           1504(a) if such corporation were the common  
10          parent and section 1504(b) did not apply.

11          “(B) CONTROL.—For purposes of para-  
12          graph (2)(D), all distributee corporations which  
13          are members of the same affiliated group (as  
14          defined in section 1504(a) without regard to  
15          section 1504(b)) shall be treated as one dis-  
16          tributee corporation.”.

17          (b) CONFORMING AMENDMENTS.—

18                 (1) Subparagraph (A) of section 355(b)(2) of  
19                 the Internal Revenue Code of 1986 is amended to  
20                 read as follows:

21                         “(A) it is engaged in the active conduct of  
22                         a trade or business,”.

23                 (2) Section 355(b)(2) of such Code is amended  
24                 by striking the last sentence.

25          (c) EFFECTIVE DATE.—

1           (1) IN GENERAL.—The amendments made by  
2       this section shall apply—

3           (A) to distributions after the date of the  
4       enactment of this Act, and

5           (B) for purposes of determining the contin-  
6       ued qualification under section 355(b)(2)(A) of  
7       the Internal Revenue Code of 1986 (as amend-  
8       ed by subsection (b)(1)) of distributions made  
9       before such date, as a result of an acquisition,  
10      disposition, or other restructuring after such  
11      date.

12          (2) TRANSITION RULE.—The amendments  
13      made by this section shall not apply to any distribu-  
14      tion pursuant to a transaction which is—

15           (A) made pursuant to an agreement which  
16      was binding on such date of enactment and at  
17      all times thereafter,

18           (B) described in a ruling request submitted  
19      to the Internal Revenue Service on or before  
20      such date, or

21           (C) described on or before such date in a  
22      public announcement or in a filing with the Se-  
23      curities and Exchange Commission.

24          (3) ELECTION TO HAVE AMENDMENTS  
25      APPLY.—Paragraph (2) shall not apply if the dis-

- 1       tributing corporation elects not to have such para-
- 2       graph apply to distributions of such corporation.
- 3       Any such election, once made, shall be irrevocable.

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