

109TH CONGRESS  
1ST SESSION

# S. 196

To amend the Internal Revenue Code of 1986 to provide for the taxation of income of controlled foreign corporations attributable to imported property.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 26, 2005

Mr. DORGAN (for himself, Ms. MIKULSKI, Mr. FEINGOLD, Mr. KOHL, Mr. HARKIN, Mr. KENNEDY, Mr. LEAHY, Mr. LEVIN, and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide for the taxation of income of controlled foreign corporations attributable to imported property.

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. TAXATION OF INCOME OF CONTROLLED FOR-**  
4 **EIGN CORPORATIONS ATTRIBUTABLE TO IM-**  
5 **PORTED PROPERTY.**

6 (a) GENERAL RULE.—Subsection (a) of section 954  
7 of the Internal Revenue Code of 1986 (defining foreign  
8 base company income) is amended by striking “and” at  
9 the end of paragraph (4), by striking the period at the

1 end of paragraph (5) and inserting “, and”, and by adding  
 2 at the end the following new paragraph:

3 “(6) imported property income for the taxable  
 4 year (determined under subsection (j) and reduced  
 5 as provided in subsection (b)(5)).”.

6 (b) DEFINITION OF IMPORTED PROPERTY IN-  
 7 COME.—Section 954 of the Internal Revenue Code of 1986  
 8 is amended by adding at the end the following new sub-  
 9 section:

10 “(j) IMPORTED PROPERTY INCOME.—

11 “(1) IN GENERAL.—For purposes of subsection  
 12 (a)(6), the term ‘imported property income’ means  
 13 income (whether in the form of profits, commissions,  
 14 fees, or otherwise) derived in connection with—

15 “(A) manufacturing, producing, growing,  
 16 or extracting imported property;

17 “(B) the sale, exchange, or other disposi-  
 18 tion of imported property; or

19 “(C) the lease, rental, or licensing of im-  
 20 ported property.

21 Such term shall not include any foreign oil and gas  
 22 extraction income (within the meaning of section  
 23 907(c)) or any foreign oil related income (within the  
 24 meaning of section 907(c)).

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

3           “(A) IN GENERAL.—Except as otherwise  
4       provided in this paragraph, the term ‘imported  
5       property’ means property which is imported  
6       into the United States by the controlled foreign  
7       corporation or a related person.

8           “(B) IMPORTED PROPERTY INCLUDES CER-  
9       TAIN PROPERTY IMPORTED BY UNRELATED  
10      PERSONS.—The term ‘imported property’ in-  
11      cludes any property imported into the United  
12      States by an unrelated person if, when such  
13      property was sold to the unrelated person by  
14      the controlled foreign corporation (or a related  
15      person), it was reasonable to expect that—

16           “(i) such property would be imported  
17      into the United States; or

18           “(ii) such property would be used as  
19      a component in other property which would  
20      be imported into the United States.

21           “(C) EXCEPTION FOR PROPERTY SUBSE-  
22      QUENTLY EXPORTED.—The term ‘imported  
23      property’ does not include any property which is  
24      imported into the United States and which—

1 “(i) before substantial use in the  
 2 United States, is sold, leased, or rented by  
 3 the controlled foreign corporation or a re-  
 4 lated person for direct use, consumption,  
 5 or disposition outside the United States; or

6 “(ii) is used by the controlled foreign  
 7 corporation or a related person as a com-  
 8 ponent in other property which is so sold,  
 9 leased, or rented.

10 “(3) DEFINITIONS AND SPECIAL RULES.—

11 “(A) IMPORT.—For purposes of this sub-  
 12 section, the term ‘import’ means entering, or  
 13 withdrawal from warehouse, for consumption or  
 14 use. Such term includes any grant of the right  
 15 to use intangible property (as defined in section  
 16 936(h)(3)(B)) in the United States.

17 “(B) UNITED STATES.—For purposes of  
 18 this subsection, the term ‘United States’ in-  
 19 cludes the Commonwealth of Puerto Rico, the  
 20 Virgin Islands of the United States, Guam,  
 21 American Samoa, and the Commonwealth of  
 22 the Northern Mariana Islands.

23 “(C) UNRELATED PERSON.—For purposes  
 24 of this subsection, the term ‘unrelated person’  
 25 means any person who is not a related person

1 with respect to the controlled foreign corpora-  
 2 tion.

3 “(D) COORDINATION WITH FOREIGN BASE  
 4 COMPANY SALES INCOME.—For purposes of this  
 5 section, the term ‘foreign base company sales  
 6 income’ shall not include any imported property  
 7 income.”.

8 (c) SEPARATE APPLICATION OF LIMITATIONS ON  
 9 FOREIGN TAX CREDIT FOR IMPORTED PROPERTY IN-  
 10 COME.—

11 (1) BEFORE 2007.—

12 (A) IN GENERAL.—Paragraph (1) of sec-  
 13 tion 904(d) of the Internal Revenue Code of  
 14 1986 (relating to separate application of section  
 15 with respect to certain categories of income), as  
 16 in effect for taxable years beginning before Jan-  
 17 uary 1, 2007, is amended by striking “and” at  
 18 the end of subparagraph (H), by redesignating  
 19 subparagraph (I) as subparagraph (J), and by  
 20 inserting after subparagraph (H) the following  
 21 new subparagraph:

22 “(I) imported property income, and”.

23 (B) IMPORTED PROPERTY INCOME DE-  
 24 FINED.—Paragraph (2) of section 904(d) of  
 25 such Code, as so in effect, is amended by redес-

ignating subparagraphs (H) and (I) as subparagraphs (I) and (J), respectively, and by inserting after subparagraph (G) the following new subparagraph:

“(H) IMPORTED PROPERTY INCOME.—The term ‘imported property income’ means any income received or accrued by any person which is of a kind which would be imported property income (as defined in section 954(j)).”.

(C) LOOK-THRU RULES TO APPLY.—Subparagraph (F) of section 904(d)(3) of such Code, as so in effect, is amended by striking “or (D)” and inserting “(D), or (I)”.

(2) AFTER 2006.—

(A) IN GENERAL.—Paragraph (1) of section 904(d) of such Code (relating to separate application of section with respect to certain categories of income), as in effect for taxable years beginning after December 31, 2006, is amended by striking “and” at the end of subparagraph (A), by redesignating subparagraph (B) as subparagraph (C), and by inserting after subparagraph (A) the following new subparagraph:

“(B) imported property income, and”.

(B) IMPORTED PROPERTY INCOME DEFINED.—Paragraph (2) of section 904(d) of such Code, as so in effect, is amended by redesignating subparagraphs (I) and (J) as subparagraphs (J) and (K), respectively, and by inserting after subparagraph (H) the following new subparagraph:

“(I) IMPORTED PROPERTY INCOME.—The term ‘imported property income’ means any income received or accrued by any person which is of a kind which would be imported property income (as defined in section 954(j)).”.

(C) CONFORMING AMENDMENT.—Clause (ii) of section 904(d)(2)(A) of such Code, as so in effect, is amended by inserting “or imported property income” after “passive category income”.

(d) TECHNICAL AMENDMENTS.—

(1) Clause (iii) of section 952(c)(1)(B) of the Internal Revenue Code of 1986 (relating to certain prior year deficits may be taken into account) is amended—

(A) by redesignating subclauses (II), (III), (IV), and (V) as subclauses (III), (IV), (V), and (VI), and

1 (B) by inserting after subclause (I) the fol-  
 2 lowing new subclause:

3 “(II) imported property in-  
 4 come,”.

5 (2) Paragraph (5) of section 954(b) of such  
 6 Code (relating to deductions to be taken into ac-  
 7 count) is amended by striking “and the foreign base  
 8 company oil related income” and inserting “the for-  
 9 eign base company oil related income, and the im-  
 10 ported property income”.

11 (e) EFFECTIVE DATES.—

12 (1) IN GENERAL.—Except as provided in para-  
 13 graph (2), the amendments made by this section  
 14 shall apply to taxable years of foreign corporations  
 15 beginning after the date of the enactment of this  
 16 Act, and to taxable years of United States share-  
 17 holders within which or with which such taxable  
 18 years of such foreign corporations end.

19 (2) SUBSECTION (c).—The amendments made  
 20 by subsection (c)(1) shall apply to taxable years be-  
 21 ginning after the date of the enactment of this Act  
 22 and before January 1, 2007, and the amendments  
 23 made by subsection (c)(2) shall apply to taxable  
 24 years beginning after December 31, 2006.

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