

110TH CONGRESS
1ST SESSION

S. 2199

To amend the Internal Revenue Code of 1986 to provide for the treatment of certain foreign nonqualified deferred compensation.

IN THE SENATE OF THE UNITED STATES

OCTOBER 18, 2007

Mr. KERRY 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 provide for the treatment of certain foreign nonqualified deferred compensation.

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 “Offshore Deferred
5 Compensation Reform Act of 2007”.

6 **SEC. 2. SPECIAL RULE FOR CERTAIN FOREIGN NON-**
7 **QUALIFIED DEFERRED COMPENSATION.**

8 (a) IN GENERAL.—Subpart B of part II of sub-
9 chapter E of chapter 1 of the Internal Revenue Code of
10 1986 (relating to taxable year for which items of gross

1 income included) is amended by inserting after section 457
 2 the following new section:

3 **“SEC. 457A. CERTAIN FOREIGN NONQUALIFIED DEFERRED**
 4 **COMPENSATION.**

5 “(a) IN GENERAL.—Any compensation which is de-
 6 ferred under a nonqualified deferred compensation plan
 7 (within the meaning of section 409A(d)) of a nonqualified
 8 foreign corporation is includible in gross income for pur-
 9 poses of this chapter when there is no substantial risk of
 10 forfeiture of the rights to such amount.

11 “(b) NONQUALIFIED FOREIGN CORPORATION.—For
 12 purposes of this section, the term ‘nonqualified foreign
 13 corporation’ means any foreign corporation unless sub-
 14 stantially all of the income of such corporation—

15 “(1) is effectively connected with the conduct of
 16 a trade or business in the United States, or

17 “(2) is subject to an income tax imposed by a
 18 foreign country, but only if—

19 “(A)(i) such corporation is eligible for ben-
 20 efits of a comprehensive income tax treaty
 21 which such country has with the United States
 22 which the Secretary determines is satisfactory
 23 for purposes of this section and which includes
 24 an exchange of information program, or

1 “(ii) the Secretary determines that such
2 income tax is a comprehensive income tax satis-
3 factory for purposes of this section, and

4 “(B) a deduction is allowed for compensa-
5 tion described in subsection (a) under rules sub-
6 stantially similar to the rules of this title.

7 “(c) APPLICATION OF CERTAIN RULES.—Rules simi-
8 lar to the rules of paragraphs (4), (5), and (6) of section
9 409A(d) shall apply for purposes of this section.

10 “(d) REGULATIONS.—The Secretary shall prescribe
11 such regulations as may be necessary or appropriate to
12 carry out the purposes of this section, including regula-
13 tions disregarding a substantial risk of forfeiture in cases
14 where necessary to carry out the purposes of this sec-
15 tion.”.

16 (b) CLERICAL AMENDMENT.—The table of sections
17 of subpart B of part II of subchapter E of chapter 1 of
18 such Code is amended by inserting after the item relating
19 to section 457 the following new item:

“Sec. 457A. Certain foreign nonqualified deferred compensation.”.

20 (c) EFFECTIVE DATE.—

21 (1) IN GENERAL.—The amendments made by
22 this section shall apply to amounts deferred in tax-
23 able years beginning after December 31, 2007.

24 (2) EARNINGS.—The amendments made by this
25 section shall apply to earnings on deferred com-

- 1 pensation only to the extent that such amendments
- 2 apply to such compensation.

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