

110TH CONGRESS
1ST SESSION

S. 2380

To amend the Internal Revenue Code of 1986 to modernize the application of the subpart F rules to computer software, to expand the subpart F de minimis rule, and to extend certain expiring provisions.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 16, 2007

Mr. SMITH (for himself and Ms. CANTWELL) 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 modernize the application of the subpart F rules to computer software, to expand the subpart F de minimis rule, and to extend certain expiring provisions.

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. MODERNIZATION OF APPLICATION OF SUB-**
4 **PART F RULES TO RENTS AND ROYALTIES**
5 **FROM COMPUTER SOFTWARE.**

6 (a) IN GENERAL.—Section 954(c)(2) of the Internal
7 Revenue Code of 1986 (relating to exceptions from defini-

1 tion of foreign personal holding income) is amended by
 2 adding at the end the following new subparagraph:

3 “(D) RENTS AND ROYALTIES DERIVED IN
 4 ACTIVE COMPUTER SOFTWARE BUSINESS.—

5 “(i) IN GENERAL.—Foreign personal
 6 holding company income shall not include
 7 rents and royalties which are attributable
 8 to computer software which—

9 “(I) is leased or licensed for use
 10 outside the United States, and

11 “(II) was developed or marketed
 12 by the controlled foreign corporation
 13 or a related person (within the mean-
 14 ing of subsection (d)(3)).

15 “(ii) DEVELOPMENT AND MAR-
 16 KETING.—For purposes of clause (i), a
 17 person shall be treated as—

18 “(I) developing computer soft-
 19 ware if the person creates, produces,
 20 or adds value to the computer soft-
 21 ware, including by adapting, custom-
 22 izing, or localizing such software or by
 23 integrating such software with other
 24 computer software created or pro-
 25 duced by such person, and

1 “(II) marketing computer soft-
 2 ware if the person engages in sales,
 3 marketing, promotional, maintenance,
 4 or support activities, or performs
 5 other significant services, with respect
 6 to the leasing or licensing of such
 7 software.”.

8 (b) EFFECTIVE DATE.—The amendment made by
 9 this section shall apply to taxable years of controlled for-
 10 eign corporations beginning after December 31, 2007, and
 11 to taxable years of United States shareholders with or
 12 within such taxable years of such foreign corporations end.

13 **SEC. 2. EXPANSION OF DE MINIMIS RULE UNDER SUBPART**

14 **F.**

15 (a) IN GENERAL.—Clause (ii) of section
 16 954(b)(3)(A) of the Internal Revenue Code of 1986 (relat-
 17 ing to de minimis, etc., rules) is amended by striking
 18 “\$1,000,000” and inserting “\$5,000,000”.

19 (b) TECHNICAL AMENDMENTS.—

20 (1) Clause (ii) of section 864(d)(5)(A) of the
 21 Internal Revenue Code of 1986 is amended by strik-
 22 ing “\$1,000,000” and inserting “\$5,000,000”.

23 (2) Clause (i) of section 881(c)(5)(A) of such
 24 Code is amended by striking “\$1,000,000” and in-
 25 serting “\$5,000,000”.

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to taxable years of controlled for-
 3 eign corporations beginning after December 31, 2007, and
 4 to taxable years of United States shareholders with or
 5 within such taxable years of such foreign corporations end.

6 **SEC. 3. PERMANENT EXTENSION OF LOOK-THRU RULE FOR**
 7 **RELATED CONTROLLED FOREIGN CORPORA-**
 8 **TIONS.**

9 Section 954(c)(6)(B) of the Internal Revenue Code
 10 of 1986 (relating to application of look-thru rule for re-
 11 lated controlled foreign corporations) is amended by strik-
 12 ing “and before January 1, 2009,”.

13 **SEC. 4. PERMANENT EXTENSION OF SUBPART F EXCEP-**
 14 **TIONS FOR ACTIVE FINANCING.**

15 (a) EXEMPT INSURANCE INCOME.—Section
 16 953(e)(10) of the Internal Revenue Code of 1986 (relating
 17 to application of exception for exempt insurance income)
 18 is amended—

19 (1) by striking “and before January 1, 2009,”,

20 and

21 (2) by striking the last sentence.

22 (b) SPECIAL RULE FOR INCOME DERIVED IN THE
 23 ACTIVE CONDUCT OF BANKING, FINANCING, OR SIMILAR
 24 BUSINESSES.—Section 954(h)(9) of the Internal Revenue

- 1 Code of 1986 (relating to application) is amended by strik-
- 2 ing “and before January 1, 2009,”.

