

110TH CONGRESS
2D SESSION

S. 2775

To amend the Internal Revenue Code of 1986 and the Social Security Act to treat certain domestically controlled foreign persons performing services under contract with the United States Government as American employers for purposes of certain employment taxes and benefits.

IN THE SENATE OF THE UNITED STATES

MARCH 13, 2008

Mr. KERRY (for himself, Mr. OBAMA, Mr. HARKIN, and Mrs. CLINTON) 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 Social Security Act to treat certain domestically controlled foreign persons performing services under contract with the United States Government as American employers for purposes of certain employment taxes and benefits.

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 “Fair Share Act of
5 2008”.

1 **SEC. 2. CERTAIN DOMESTICALLY CONTROLLED FOREIGN**
 2 **PERSONS PERFORMING SERVICES UNDER**
 3 **CONTRACT WITH UNITED STATES GOVERN-**
 4 **MENT TREATED AS AMERICAN EMPLOYERS.**

5 (a) FICA TAXES.—Section 3121 of the Internal Rev-
 6 enue Code of 1986 (relating to definitions) is amended by
 7 adding at the end the following new subsection:

8 “(z) TREATMENT OF CERTAIN FOREIGN PERSONS AS
 9 AMERICAN EMPLOYERS.—

10 “(1) IN GENERAL.—If any employee of a for-
 11 eign person is performing services in connection with
 12 a contract between the United States Government
 13 (or any instrumentality thereof) and any member of
 14 any domestically controlled group of entities which
 15 includes such foreign person, such foreign person
 16 shall be treated for purposes of this chapter as an
 17 American employer with respect to such services per-
 18 formed by such employee.

19 “(2) DOMESTICALLY CONTROLLED GROUP OF
 20 ENTITIES.—For purposes of this subsection—

21 “(A) IN GENERAL.—The term ‘domesti-
 22 cally controlled group of entities’ means a con-
 23 trolled group of entities the common parent of
 24 which is a domestic corporation.

25 “(B) CONTROLLED GROUP OF ENTITIES.—
 26 The term ‘controlled group of entities’ means a

1 controlled group of corporations as defined in
2 section 1563(a)(1), except that—

3 “(i) ‘more than 50 percent’ shall be
4 substituted for ‘at least 80 percent’ each
5 place it appears therein, and

6 “(ii) the determination shall be made
7 without regard to subsections (a)(4) and
8 (b)(2) of section 1563.

9 A partnership or any other entity (other than a
10 corporation) shall be treated as a member of a
11 controlled group of entities if such entity is con-
12 trolled (within the meaning of section
13 954(d)(3)) by members of such group (includ-
14 ing any entity treated as a member of such
15 group by reason of this sentence).

16 “(3) LIABILITY OF COMMON PARENT.—In the
17 case of a foreign person who is a member of any do-
18 mestically controlled group of entities, the common
19 parent of such group shall be jointly and severally
20 liable for any tax under this chapter for which such
21 foreign person is liable by reason of this subsection.

22 “(4) CROSS REFERENCE.—For relief from taxes
23 in cases covered by certain international agreements,
24 see sections 3101(c) and 3111(c).”.

1 (b) SOCIAL SECURITY BENEFITS.—Subsection (e) of
2 section 210 of the Social Security Act (42 U.S.C. 410(e))
3 is amended—

4 (1) by striking “(e) The term” and inserting
5 “(e)(1) The term”,

6 (2) by redesignating paragraphs (1) through
7 (6) as subparagraphs (A) through (F), respectively,
8 and

9 (3) by adding at the end the following new
10 paragraph:

11 “(2)(A) If any employee of a foreign person is
12 performing services in connection with a contract be-
13 tween the United States Government (or any instru-
14 mentality thereof) and any member of any domesti-
15 cally controlled group of entities which includes such
16 foreign person, such foreign person shall be treated
17 for purposes of this chapter as an American em-
18 ployer with respect to such services performed by
19 such employee.

20 “(B) For purposes of this paragraph—

21 “(i) The term ‘domestically controlled
22 group of entities’ means a controlled group of
23 entities the common parent of which is a do-
24 mestic corporation.

1 “(ii) The term ‘controlled group of entities’
 2 means a controlled group of corporations as de-
 3 fined in section 1563(a)(1) of the Internal Rev-
 4 enue Code of 1986, except that—

5 “(I) ‘more than 50 percent’ shall be
 6 substituted for ‘at least 80 percent’ each
 7 place it appears therein, and

8 “(II) the determination shall be made
 9 without regard to subsections (a)(4) and
 10 (b)(2) of section 1563 of such Code.

11 A partnership or any other entity (other than a
 12 corporation) shall be treated as a member of a
 13 controlled group of entities if such entity is con-
 14 trolled (within the meaning of section 954(d)(3)
 15 of such Code) by members of such group (in-
 16 cluding any entity treated as a member of such
 17 group by reason of this sentence).”.

18 (c) EFFECTIVE DATE.—The amendment made by
 19 this section shall apply to services performed after the
 20 date of the enactment of this Act.

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