

110TH CONGRESS
2D SESSION

S. 3359

To amend the Internal Revenue Code of 1986 to repeal the shipping investment withdrawal rules in section 955 and to provide an incentive to reinvest foreign shipping earnings in the United States.

IN THE SENATE OF THE UNITED STATES

JULY 29 (legislative day, JULY 28), 2008

Ms. CANTWELL (for herself and Mr. SMITH) 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 repeal the shipping investment withdrawal rules in section 955 and to provide an incentive to reinvest foreign shipping earnings in the United States.

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 “American Shipping Re-
5 investment Act of 2008”.

1 **SEC. 2. REPEAL OF QUALIFIED SHIPPING INVESTMENT**
2 **WITHDRAWAL RULES.**

3 (a) IN GENERAL.—Section 955 of the Internal Rev-
4 enue Code of 1986 (relating to withdrawal of previously
5 excluded subpart F income from qualified investment) is
6 hereby repealed.

7 (b) CONFORMING AMENDMENTS.—

8 (1) Section 951(a)(1)(A) of such Code is
9 amended by adding “and” at the end of clause (i)
10 and by striking clause (iii).

11 (2) Section 951(a)(3) of such Code (relating to
12 the limitation on pro rata share of previously ex-
13 cluded subpart F income withdrawn from invest-
14 ment) is hereby repealed.

15 (3) Section 964(b) of such Code is amended by
16 striking “, 955,”.

17 (4) The table of sections for subpart F of part
18 III of subchapter N of chapter 1 of such Code is
19 amended by striking the item relating to section
20 955.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to taxable years of controlled for-
23 eign corporations ending on or after the date of the enact-
24 ment of this Act, and to taxable years of United States
25 shareholders in which or with which such taxable years
26 of controlled foreign corporations end.

1 **SEC. 3. TEMPORARY DIVIDENDS RECEIVED DEDUCTION**
 2 **FOR PREVIOUSLY UNTAXED FOREIGN BASE**
 3 **COMPANY SHIPPING INCOME.**

4 (a) IN GENERAL.—Section 965 of the Internal Rev-
 5 enue Code of 1986 (relating to temporary dividends re-
 6 ceived deduction) is amended by adding at the end the
 7 following new subsection:

8 “(g) TEMPORARY DIVIDENDS RECEIVED DEDUCTION
 9 FOR FOREIGN BASE COMPANY SHIPPING INCOME.—

10 “(1) IN GENERAL.—In the case of a corpora-
 11 tion which is a United States shareholder and for
 12 which the election under this subsection is in effect
 13 for the taxable year, there shall be allowed as a de-
 14 duction an amount equal to 85 percent of the cash
 15 distributions which are received during such taxable
 16 year by such shareholder from controlled foreign cor-
 17 porations to the extent that the distributions are at-
 18 tributable to income—

19 “(A) which was derived by the controlled
 20 foreign corporation in taxable years beginning
 21 before January 1, 2005, and

22 “(B) which would, without regard to the
 23 year earned, be described in section 954(f) (as
 24 in effect before the enactment of the American
 25 Jobs Creation Act of 2004).

1 “(2) INDIRECT DIVIDENDS.—A rule similar to
 2 the rule of subsection (a)(2) shall apply, determined
 3 by treating cash distributions which are so attrib-
 4 utable as cash dividends.

5 “(3) LIMITATION.—The amount of dividends
 6 taken into account under this subsection shall not
 7 exceed the amount permitted to be taken into ac-
 8 count under paragraphs (1), (3), and (4) of sub-
 9 section (b), determined as if such paragraphs ap-
 10 plied to this subsection.

11 “(4) TAXPAYER ELECTION AND DESIGNA-
 12 TION.—For purposes of paragraph (1), a United
 13 States shareholder may, on its return for the taxable
 14 year to which this subsection applies—

15 “(A) elect to apply paragraph (3) of sec-
 16 tion 959(c) before paragraphs (1) and (2)
 17 thereof, and

18 “(B) designate the extent, if any, to which
 19 a cash distribution reduces a controlled foreign
 20 corporation’s earnings and profits attributable
 21 to—

22 “(i) foreign base company shipping in-
 23 come (determined under section 954(f) as
 24 in effect before the enactment of the Amer-
 25 ican Jobs Creation Act of 2004), or

1 “(ii) other earnings and profits.

2 “(5) ELECTION.—The taxpayer may elect to
3 apply this subsection to—

4 “(A) the taxpayer’s last taxable year which
5 begins before the date of the enactment of this
6 subsection, or

7 “(B) the taxpayer’s first taxable year
8 which begins during the 1-year period beginning
9 on such date.

10 Such election may be made for a taxable year only
11 if made on or before the due date (including exten-
12 sions) for filing the return of tax for such taxable
13 year.

14 “(6) REDUCTION IN BENEFITS FOR FAILURE
15 TO MAINTAIN EMPLOYMENT LEVELS.—

16 “(A) IN GENERAL.—If, during the period
17 consisting of the calendar month in which the
18 taxpayer first receives a distribution described
19 in paragraph (1) and the succeeding 23 cal-
20 endar months, the taxpayer does not maintain
21 an average employment level at least equal to
22 the taxpayer’s prior average employment, an
23 additional amount equal to \$25,000 multiplied
24 by the number of employees by which the tax-
25 payers average employment level during such

1 period falls below the prior average employment
2 (but not exceeding the aggregate amount al-
3 lowed as a deduction pursuant to paragraph
4 (1)) shall be taken into income by the taxpayer
5 during the taxable year that includes the final
6 day of such period.

7 “(B) PRIOR AVERAGE EMPLOYMENT.—For
8 purposes of this paragraph, the taxpayer’s
9 ‘prior average employment’ shall be the average
10 number of employees of the taxpayer during the
11 period consisting of the 24 calendar months im-
12 mediately preceding the calendar month in
13 which the taxpayer first receives a distribution
14 described in paragraph (1).

15 “(C) AGGREGATION RULES.—In deter-
16 mining the taxpayer’s average employment level
17 and prior average employment, all domestic
18 members of a controlled group (as defined in
19 section 264(e)(5)(B)) shall be treated as a sin-
20 gle taxpayer.”.

21 (b) CONFORMING AMENDMENT.—Subsection (f) of
22 section 965 of such Code is amended by inserting “other
23 than subsection (g)” after “this section” in the material
24 preceding paragraph (1).

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years ending on or after
3 the date of the enactment of this Act.

