

111TH CONGRESS
2D SESSION

H. R. 5793

To amend the Internal Revenue Code of 1986 to close foreign tax loopholes.

IN THE HOUSE OF REPRESENTATIVES

JULY 20, 2010

Mr. GARAMENDI (for himself, Mr. McDERMOTT, Mrs. NAPOLITANO, Mr. DEFazio, Mr. HARE, Ms. SUTTON, Mr. SCHAUER, Mr. HINCHEY, Ms. KAPTUR, Mr. KAGEN, and Mr. PERLMUTTER) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to close foreign tax loopholes.

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; AMENDMENT OF 1986 CODE;**

4 **TABLE OF CONTENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Close Foreign Tax Loopholes: Make it in America Act
7 of 2010”.

8 (b) AMENDMENT OF 1986 CODE.—Except as other-
9 wise expressly provided, whenever in this Act an amend-
10 ment or repeal is expressed in terms of an amendment

1 to, or repeal of, a section or other provision, the reference
 2 shall be considered to be made to a section or other provi-
 3 sion of the Internal Revenue Code of 1986.

4 (c) TABLE OF CONTENTS.—The table of contents for
 5 this Act is as follows:

Sec. 1. Short title; amendment of 1986 code; table of contents.

Sec. 2. Rules to prevent splitting foreign tax credits from the income to which they relate.

Sec. 3. Denial of foreign tax credit with respect to foreign income not subject to United States taxation by reason of covered asset acquisitions.

Sec. 4. Separate application of foreign tax credit limitation, etc., to items resourced under treaties.

Sec. 5. Limitation on the amount of foreign taxes deemed paid with respect to section 956 inclusions.

Sec. 6. Special rule with respect to certain redemptions by foreign subsidiaries.

Sec. 7. Modification of affiliation rules for purposes of rules allocating interest expense.

Sec. 8. Termination of special rules for interest and dividends received from persons meeting the 80-percent foreign business requirements.

Sec. 9. Source rules for income on guarantees.

Sec. 10. Limitation on extension of statute of limitations for failure to notify Secretary of certain foreign transfers.

6 **SEC. 2. RULES TO PREVENT SPLITTING FOREIGN TAX**
 7 **CREDITS FROM THE INCOME TO WHICH THEY**
 8 **RELATE.**

9 (a) IN GENERAL.—Subpart A of part III of sub-
 10 chapter N of chapter 1 is amended by adding at the end
 11 the following new section:

12 **“SEC. 909. SUSPENSION OF TAXES AND CREDITS UNTIL RE-**
 13 **LATED INCOME TAKEN INTO ACCOUNT.**

14 “(a) IN GENERAL.—If there is a foreign tax credit
 15 splitting event with respect to a foreign income tax paid
 16 or accrued by the taxpayer, such tax shall not be taken
 17 into account for purposes of this title before the taxable

1 year in which the related income is taken into account
2 under this chapter by the taxpayer.

3 “(b) SPECIAL RULES WITH RESPECT TO SECTION
4 902 CORPORATIONS.—If there is a foreign tax credit split-
5 ting event with respect to a foreign income tax paid or
6 accrued by a section 902 corporation, such tax shall not
7 be taken into account—

8 “(1) for purposes of section 902 or 960, or

9 “(2) for purposes of determining earnings and
10 profits under section 964(a),

11 before the taxable year in which the related income is
12 taken into account under this chapter by such section 902
13 corporation or a domestic corporation which meets the
14 ownership requirements of subsection (a) or (b) of section
15 902 with respect to such section 902 corporation.

16 “(c) SPECIAL RULES.—For purposes of this sec-
17 tion—

18 “(1) APPLICATION TO PARTNERSHIPS, ETC.—In
19 the case of a partnership, subsections (a) and (b)
20 shall be applied at the partner level. Except as oth-
21 erwise provided by the Secretary, a rule similar to
22 the rule of the preceding sentence shall apply in the
23 case of any S corporation or trust.

24 “(2) TREATMENT OF FOREIGN TAXES AFTER
25 SUSPENSION.—In the case of any foreign income tax

1 not taken into account by reason of subsection (a)
2 or (b), except as otherwise provided by the Sec-
3 retary, such tax shall be so taken into account in the
4 taxable year referred to in such subsection (other
5 than for purposes of section 986(a)) as a foreign in-
6 come tax paid or accrued in such taxable year.

7 “(d) DEFINITIONS.—For purposes of this section—

8 “(1) FOREIGN TAX CREDIT SPLITTING
9 EVENT.—There is a foreign tax credit splitting event
10 with respect to a foreign income tax if the related
11 income is (or will be) taken into account under this
12 chapter by a covered person.

13 “(2) FOREIGN INCOME TAX.—The term ‘foreign
14 income tax’ means any income, war profits, or excess
15 profits tax paid or accrued to any foreign country or
16 to any possession of the United States.

17 “(3) RELATED INCOME.—The term ‘related in-
18 come’ means, with respect to any portion of any for-
19 eign income tax, the income (or, as appropriate,
20 earnings and profits) to which such portion of for-
21 eign income tax relates.

22 “(4) COVERED PERSON.—The term ‘covered
23 person’ means, with respect to any person who pays
24 or accrues a foreign income tax (hereafter in this
25 paragraph referred to as the ‘payor’)—

1 “(A) any entity in which the payor holds,
2 directly or indirectly, at least a 10 percent own-
3 ership interest (determined by vote or value),

4 “(B) any person which holds, directly or
5 indirectly, at least a 10 percent ownership in-
6 terest (determined by vote or value) in the
7 payor,

8 “(C) any person which bears a relationship
9 to the payor described in section 267(b) or
10 707(b), and

11 “(D) any other person specified by the
12 Secretary for purposes of this paragraph.

13 “(5) SECTION 902 CORPORATION.—The term
14 ‘section 902 corporation’ means any foreign corpora-
15 tion with respect to which one or more domestic cor-
16 porations meets the ownership requirements of sub-
17 section (a) or (b) of section 902.

18 “(e) REGULATIONS.—The Secretary may issue such
19 regulations or other guidance as is necessary or appro-
20 priate to carry out the purposes of this section, including
21 regulations or other guidance which provides—

22 “(1) appropriate exceptions from the provisions
23 of this section, and

24 “(2) for the proper application of this section
25 with respect to hybrid instruments.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
2 for subpart A of part III of subchapter N of chapter 1
3 is amended by adding at the end the following new item:

“Sec. 909. Suspension of taxes and credits until related income taken into account.”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to—

6 (1) foreign income taxes (as defined in section
7 909(d) of the Internal Revenue Code of 1986, as
8 added by this section) paid or accrued after May 20,
9 2010; and

10 (2) foreign income taxes (as so defined) paid or
11 accrued by a section 902 corporation (as so defined)
12 on or before such date (and not deemed paid under
13 section 902(a) or 960 of such Code on or before
14 such date), but only for purposes of applying sec-
15 tions 902 and 960 with respect to periods after such
16 date.

17 Section 909(b)(2) of the Internal Revenue Code of 1986,
18 as added by this section, shall not apply to foreign income
19 taxes described in paragraph (2).

1 **SEC. 3. DENIAL OF FOREIGN TAX CREDIT WITH RESPECT**
 2 **TO FOREIGN INCOME NOT SUBJECT TO**
 3 **UNITED STATES TAXATION BY REASON OF**
 4 **COVERED ASSET ACQUISITIONS.**

5 (a) IN GENERAL.—Section 901 is amended by redesh-
 6 ignating subsection (m) as subsection (n) and by inserting
 7 after subsection (l) the following new subsection:

8 “(m) DENIAL OF FOREIGN TAX CREDIT WITH RE-
 9 SPECT TO FOREIGN INCOME NOT SUBJECT TO UNITED
 10 STATES TAXATION BY REASON OF COVERED ASSET AC-
 11 QUISTIONS.—

12 “(1) IN GENERAL.—In the case of a covered
 13 asset acquisition, the disqualified portion of any for-
 14 eign income tax determined with respect to the in-
 15 come or gain attributable to the relevant foreign as-
 16 sets—

17 “(A) shall not be taken into account in de-
 18 termining the credit allowed under subsection
 19 (a), and

20 “(B) in the case of a foreign income tax
 21 paid by a section 902 corporation (as defined in
 22 section 909(d)(5)), shall not be taken into ac-
 23 count for purposes of section 902 or 960.

24 “(2) COVERED ASSET ACQUISITION.—For pur-
 25 poses of this section, the term ‘covered asset acqui-
 26 sition’ means—

1 “(A) a qualified stock purchase (as defined
 2 in section 338(d)(3)) to which section 338(a)
 3 applies,

4 “(B) any transaction which—

5 “(i) is treated as an acquisition of as-
 6 sets for purposes of this chapter, and

7 “(ii) is treated as the acquisition of
 8 stock of a corporation (or is disregarded)
 9 for purposes of the foreign income taxes of
 10 the relevant jurisdiction,

11 “(C) any acquisition of an interest in a
 12 partnership which has an election in effect
 13 under section 754, and

14 “(D) to the extent provided by the Sec-
 15 retary, any other similar transaction.

16 “(3) DISQUALIFIED PORTION.—For purposes of
 17 this section—

18 “(A) IN GENERAL.—The term ‘disqualified
 19 portion’ means, with respect to any covered
 20 asset acquisition, for any taxable year, the ratio
 21 (expressed as a percentage) of—

22 “(i) the aggregate basis differences
 23 (but not below zero) allocable to such tax-
 24 able year under subparagraph (B) with re-

1 spect to all relevant foreign assets, divided
2 by

3 “(ii) the income on which the foreign
4 income tax referred to in paragraph (1) is
5 determined (or, if the taxpayer fails to sub-
6 stantiate such income to the satisfaction of
7 the Secretary, such income shall be deter-
8 mined by dividing the amount of such for-
9 eign income tax by the highest marginal
10 tax rate applicable to such income in the
11 relevant jurisdiction).

12 “(B) ALLOCATION OF BASIS DIF-
13 ERENCE.—For purposes of subparagraph
14 (A)(i)—

15 “(i) IN GENERAL.—The basis dif-
16 ference with respect to any relevant foreign
17 asset shall be allocated to taxable years
18 using the applicable cost recovery method
19 under this chapter.

20 “(ii) SPECIAL RULE FOR DISPOSITION
21 OF ASSETS.—Except as otherwise provided
22 by the Secretary, in the case of the dispo-
23 sition of any relevant foreign asset—

24 “(I) the basis difference allocated
25 to the taxable year which includes the

1 date of such disposition shall be the
 2 excess of the basis difference with re-
 3 spect to such asset over the aggregate
 4 basis difference with respect to such
 5 asset which has been allocated under
 6 clause (i) to all prior taxable years,
 7 and

8 “(II) no basis difference with re-
 9 spect to such asset shall be allocated
 10 under clause (i) to any taxable year
 11 thereafter.

12 “(C) BASIS DIFFERENCE.—

13 “(i) IN GENERAL.—The term ‘basis
 14 difference’ means, with respect to any rel-
 15 evant foreign asset, the excess of—

16 “(I) the adjusted basis of such
 17 asset immediately after the covered
 18 asset acquisition, over

19 “(II) the adjusted basis of such
 20 asset immediately before the covered
 21 asset acquisition.

22 “(ii) BUILT-IN LOSS ASSETS.—In the
 23 case of a relevant foreign asset with re-
 24 spect to which the amount described in
 25 clause (i)(II) exceeds the amount described

1 in clause (i)(I), such excess shall be taken
2 into account under this subsection as a
3 basis difference of a negative amount.

4 “(iii) SPECIAL RULE FOR SECTION 338
5 ELECTIONS.—In the case of a covered
6 asset acquisition described in paragraph
7 (2)(A), the covered asset acquisition shall
8 be treated for purposes of this subpara-
9 graph as occurring at the close of the ac-
10 quisition date (as defined in section
11 338(h)(2)).

12 “(4) RELEVANT FOREIGN ASSETS.—For pur-
13 poses of this section, the term ‘relevant foreign
14 asset’ means, with respect to any covered asset ac-
15 quisition, any asset (including any goodwill, going
16 concern value, or other intangible) with respect to
17 such acquisition if income, deduction, gain, or loss
18 attributable to such asset is taken into account in
19 determining the foreign income tax referred to in
20 paragraph (1).

21 “(5) FOREIGN INCOME TAX.—For purposes of
22 this section, the term ‘foreign income tax’ means
23 any income, war profits, or excess profits tax paid
24 or accrued to any foreign country or to any posses-
25 sion of the United States.

1 “(6) TAXES ALLOWED AS A DEDUCTION, ETC.—
2 Sections 275 and 78 shall not apply to any tax
3 which is not allowable as a credit under subsection
4 (a) by reason of this subsection.

5 “(7) REGULATIONS.—The Secretary may issue
6 such regulations or other guidance as is necessary or
7 appropriate to carry out the purposes of this sub-
8 section, including to exempt from the application of
9 this subsection certain covered asset acquisitions,
10 and relevant foreign assets with respect to which the
11 basis difference is de minimis.”.

12 (b) EFFECTIVE DATE.—

13 (1) IN GENERAL.—Except as provided in para-
14 graph (2), the amendments made by this section
15 shall apply to covered asset acquisitions (as defined
16 in section 901(m)(2) of the Internal Revenue Code
17 of 1986, as added by this section) after—

18 (A) May 20, 2010, if the transferor and
19 the transferee are related, and

20 (B) the date of the enactment of this Act
21 in any other case.

22 (2) TRANSITION RULE.—The amendments
23 made by this section shall not apply to any covered
24 asset acquisition (as so defined) with respect to

1 which the transferor and the transferee are not re-
 2 lated if such acquisition is—

3 (A) made pursuant to a written agreement
 4 which was binding on May 20, 2010, and at all
 5 times thereafter,

6 (B) described in a ruling request submitted
 7 to the Internal Revenue Service on or before
 8 such date, or

9 (C) described on or before such date in a
 10 public announcement or in a filing with the Se-
 11 curities and Exchange Commission.

12 (3) RELATED PERSONS.—For purposes of this
 13 subsection, a person shall be treated as related to
 14 another person if the relationship between such per-
 15 sons is described in section 267 or 707(b) of the In-
 16 ternal Revenue Code of 1986.

17 **SEC. 4. SEPARATE APPLICATION OF FOREIGN TAX CREDIT**
 18 **LIMITATION, ETC., TO ITEMS RESOURCED**
 19 **UNDER TREATIES.**

20 (a) IN GENERAL.—Subsection (d) of section 904 is
 21 amended by redesignating paragraph (6) as paragraph (7)
 22 and by inserting after paragraph (5) the following new
 23 paragraph:

24 “(6) SEPARATE APPLICATION TO ITEMS
 25 RESOURCED UNDER TREATIES.—

1 “(A) IN GENERAL.—If—

2 “(i) without regard to any treaty obli-
3 gation of the United States, any item of
4 income would be treated as derived from
5 sources within the United States,

6 “(ii) under a treaty obligation of the
7 United States, such item would be treated
8 as arising from sources outside the United
9 States, and

10 “(iii) the taxpayer chooses the bene-
11 fits of such treaty obligation,
12 subsections (a), (b), and (c) of this section and
13 sections 902, 907, and 960 shall be applied sep-
14 arately with respect to each such item.

15 “(B) COORDINATION WITH OTHER PROVI-
16 SIONS.—This paragraph shall not apply to any
17 item of income to which subsection (h)(10) or
18 section 865(h) applies.

19 “(C) REGULATIONS.—The Secretary may
20 issue such regulations or other guidance as is
21 necessary or appropriate to carry out the pur-
22 poses of this paragraph, including regulations
23 or other guidance which provides that related
24 items of income may be aggregated for pur-
25 poses of this paragraph.”.

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

4 **SEC. 5. LIMITATION ON THE AMOUNT OF FOREIGN TAXES**
 5 **DEEMED PAID WITH RESPECT TO SECTION**
 6 **956 INCLUSIONS.**

7 (a) IN GENERAL.—Section 960 is amended by adding
 8 at the end the following new subsection:

9 “(c) LIMITATION WITH RESPECT TO SECTION 956
 10 INCLUSIONS.—

11 “(1) IN GENERAL.—If there is included under
 12 section 951(a)(1)(B) in the gross income of a do-
 13 mestic corporation any amount attributable to the
 14 earnings and profits of a foreign corporation which
 15 is a member of a qualified group (as defined in sec-
 16 tion 902(b)) with respect to the domestic corpora-
 17 tion, the amount of any foreign income taxes deemed
 18 to have been paid during the taxable year by such
 19 domestic corporation under section 902 by reason of
 20 subsection (a) with respect to such inclusion in gross
 21 income shall not exceed the amount of the foreign
 22 income taxes which would have been deemed to have
 23 been paid during the taxable year by such domestic
 24 corporation if cash in an amount equal to the
 25 amount of such inclusion in gross income were dis-

1 tributed as a series of distributions (determined
 2 without regard to any foreign taxes which would be
 3 imposed on an actual distribution) through the chain
 4 of ownership which begins with such foreign cor-
 5 poration and ends with such domestic corporation.

6 “(2) AUTHORITY TO PREVENT ABUSE.—The
 7 Secretary shall issue such regulations or other guid-
 8 ance as is necessary or appropriate to carry out the
 9 purposes of this subsection, including regulations or
 10 other guidance which prevent the inappropriate use
 11 of the foreign corporation’s foreign income taxes not
 12 deemed paid by reason of paragraph (1).”.

13 (b) EFFECTIVE DATE.—The amendment made by
 14 this section shall apply to acquisitions of United States
 15 property (as defined in section 956(c) of the Internal Rev-
 16 enue Code of 1986) after May 20, 2010.

17 **SEC. 6. SPECIAL RULE WITH RESPECT TO CERTAIN RE-**
 18 **DEMPTIONS BY FOREIGN SUBSIDIARIES.**

19 (a) IN GENERAL.—Paragraph (5) of section 304(b)
 20 is amended by redesignating subparagraph (B) as sub-
 21 paragraph (C) and by inserting after subparagraph (A)
 22 the following new subparagraph:

23 “(B) SPECIAL RULE IN CASE OF FOREIGN
 24 ACQUIRING CORPORATION.—In the case of any
 25 acquisition to which subsection (a) applies in

1 which the acquiring corporation is a foreign
 2 corporation, no earnings and profits shall be
 3 taken into account under paragraph (2)(A)
 4 (and subparagraph (A) shall not apply) if more
 5 than 50 percent of the dividends arising from
 6 such acquisition (determined without regard to
 7 this subparagraph) would not—

8 “(i) be subject to tax under this chap-
 9 ter for the taxable year in which the divi-
 10 dends arise, or

11 “(ii) be includible in the earnings and
 12 profits of a controlled foreign corporation
 13 (as defined in section 957 and without re-
 14 gard to section 953(c)).”.

15 (b) EFFECTIVE DATE.—The amendments made by
 16 this section shall apply to acquisitions after May 20, 2010.

17 **SEC. 7. MODIFICATION OF AFFILIATION RULES FOR PUR-**
 18 **POSES OF RULES ALLOCATING INTEREST EX-**
 19 **PENSE.**

20 (a) IN GENERAL.—Subparagraph (A) of section
 21 864(e)(5) is amended by adding at the end the following:
 22 “Notwithstanding the preceding sentence, a foreign cor-
 23 poration shall be treated as a member of the affiliated
 24 group if—

1 “(i) more than 50 percent of the gross
2 income of such foreign corporation for the
3 taxable year is effectively connected with
4 the conduct of a trade or business within
5 the United States, and

6 “(ii) at least 80 percent of either the
7 vote or value of all outstanding stock of
8 such foreign corporation is owned directly
9 or indirectly by members of the affiliated
10 group (determined with regard to this sen-
11 tence).”.

12 (b) EFFECTIVE DATE.—The amendment made by
13 this section shall apply to taxable years beginning after
14 the date of the enactment of this Act.

15 **SEC. 8. TERMINATION OF SPECIAL RULES FOR INTEREST**
16 **AND DIVIDENDS RECEIVED FROM PERSONS**
17 **MEETING THE 80-PERCENT FOREIGN BUSI-**
18 **NESS REQUIREMENTS.**

19 (a) IN GENERAL.—Paragraph (1) of section 861(a)
20 is amended by striking subparagraph (A) and by redesignig-
21 nating subparagraphs (B) and (C) as subparagraphs (A)
22 and (B), respectively.

23 (b) GRANDFATHER RULE WITH RESPECT TO WITH-
24 HOLDING ON INTEREST AND DIVIDENDS RECEIVED FROM

1 PERSONS MEETING THE 80-PERCENT FOREIGN BUSI-
 2 NESS REQUIREMENTS.—

3 (1) IN GENERAL.—Subparagraph (B) of section
 4 871(i)(2) is amended to read as follows:

5 “(B) The active foreign business percent-
 6 age of—

7 “(i) any dividend paid by an existing
 8 80/20 company, and

9 “(ii) any interest paid by an existing
 10 80/20 company.”.

11 (2) DEFINITIONS AND SPECIAL RULES.—Sec-
 12 tion 871 is amended by redesignating subsections (l)
 13 and (m) as subsections (m) and (n), respectively,
 14 and by inserting after subsection (k) the following
 15 new subsection:

16 “(l) RULES RELATING TO EXISTING 80/20 COMPA-
 17 NIES.—For purposes of this subsection and subsection
 18 (i)(2)(B)—

19 “(1) EXISTING 80/20 COMPANY.—

20 “(A) IN GENERAL.—The term ‘existing 80/
 21 20 company’ means any corporation if—

22 “(i) such corporation met the 80-per-
 23 cent foreign business requirements of sec-
 24 tion 861(c)(1) (as in effect before the en-
 25 actment of this subsection) for such cor-

1 poration’s last taxable year beginning be-
2 fore January 1, 2011,

3 “(ii) such corporation meets the 80-
4 percent foreign business requirements of
5 subparagraph (B) with respect to each tax-
6 able year after the taxable year referred to
7 in clause (i), and

8 “(iii) there has not been an addition
9 of a substantial line of business with re-
10 spect to such corporation after the date of
11 the enactment of this subsection.

12 “(B) FOREIGN BUSINESS REQUIRE-
13 MENTS.—

14 “(i) IN GENERAL.—A corporation
15 meets the 80-percent foreign business re-
16 quirements of this subparagraph if it is
17 shown to the satisfaction of the Secretary
18 that at least 80 percent of the gross in-
19 come from all sources of such corporation
20 for the testing period is active foreign busi-
21 ness income.

22 “(ii) ACTIVE FOREIGN BUSINESS IN-
23 COME.—For purposes of clause (i), the
24 term ‘active foreign business income’
25 means gross income which—

1 “(I) is derived from sources out-
2 side the United States (as determined
3 under this subchapter), and

4 “(II) is attributable to the active
5 conduct of a trade or business in a
6 foreign country or possession of the
7 United States.

8 “(iii) TESTING PERIOD.—For pur-
9 poses of this subsection, the term ‘testing
10 period’ means the 3-year period ending
11 with the close of the taxable year of the
12 corporation preceding the payment (or
13 such part of such period as may be appli-
14 cable). If the corporation has no gross in-
15 come for such 3-year period (or part there-
16 of), the testing period shall be the taxable
17 year in which the payment is made.

18 “(2) ACTIVE FOREIGN BUSINESS PERCENT-
19 AGE.—The term ‘active foreign business percentage’
20 means, with respect to any existing 80/20 company,
21 the percentage which—

22 “(A) the active foreign business income of
23 such company for the testing period, is of

24 “(B) the gross income of such company for
25 the testing period from all sources.

1 “(3) AGGREGATION RULES.—For purposes of
2 applying paragraph (1) (other than subparagraph
3 (A)(i) thereof) and paragraph (2)—

4 “(A) IN GENERAL.—The corporation re-
5 ferred to in paragraph (1)(A) and all of such
6 corporation’s subsidiaries shall be treated as
7 one corporation.

8 “(B) SUBSIDIARIES.—For purposes of sub-
9 paragraph (A), the term ‘subsidiary’ means any
10 corporation in which the corporation referred to
11 in subparagraph (A) owns (directly or indi-
12 rectly) stock meeting the requirements of sec-
13 tion 1504(a)(2) (determined by substituting ‘50
14 percent’ for ‘80 percent’ each place it appears
15 and without regard to section 1504(b)(3)).

16 “(4) REGULATIONS.—The Secretary may issue
17 such regulations or other guidance as is necessary or
18 appropriate to carry out the purposes of this section,
19 including regulations or other guidance which pro-
20 vide for the proper application of the aggregation
21 rules described in paragraph (3).”.

22 (c) CONFORMING AMENDMENTS.—

23 (1) Section 861 is amended by striking sub-
24 section (c) and by redesignating subsections (d), (e),
25 and (f) as subsections (c), (d), and (e), respectively.

1 (2) Paragraph (9) of section 904(h) is amended
2 to read as follows:

3 “(9) TREATMENT OF CERTAIN DOMESTIC COR-
4 PORATIONS.—In the case of any dividend treated as
5 not from sources within the United States under
6 section 861(a)(2)(A), the corporation paying such
7 dividend shall be treated for purposes of this sub-
8 section as a United States-owned foreign corpora-
9 tion.”.

10 (3) Subsection (c) of section 2104 is amended
11 in the last sentence by striking “or to a debt obliga-
12 tion of a domestic corporation” and all that follows
13 and inserting a period.

14 (d) EFFECTIVE DATE.—

15 (1) IN GENERAL.—Except as provided in para-
16 graph (2), the amendments made by this section
17 shall apply to taxable years beginning after Decem-
18 ber 31, 2010.

19 (2) GRANDFATHER RULE FOR OUTSTANDING
20 DEBT OBLIGATIONS.—

21 (A) IN GENERAL.—The amendments made
22 by this section shall not apply to payments of
23 interest on obligations issued before the date of
24 the enactment of this Act.

1 (B) EXCEPTION FOR RELATED PARTY
 2 DEBT.—Subparagraph (A) shall not apply to
 3 any interest which is payable to a related per-
 4 son (determined under rules similar to the rules
 5 of section 954(d)(3)).

6 (C) SIGNIFICANT MODIFICATIONS TREAT-
 7 ED AS NEW ISSUES.—For purposes of subpara-
 8 graph (A), a significant modification of the
 9 terms of any obligation (including any extension
 10 of the term of such obligation) shall be treated
 11 as a new issue.

12 **SEC. 9. SOURCE RULES FOR INCOME ON GUARANTEES.**

13 (a) AMOUNTS SOURCED WITHIN THE UNITED
 14 STATES.—Subsection (a) of section 861 is amended by
 15 adding at the end the following new paragraph:

16 “(9) GUARANTEES.—Amounts—

17 “(A) received from noncorporate residents
 18 or domestic corporations with respect to guar-
 19 antees, and

20 “(B) paid by any foreign person with re-
 21 spect to guarantees if such amount is connected
 22 with income which is effectively connected (or
 23 treated as effectively connected) with the con-
 24 duct of a trade or business in the United
 25 States.”.

1 (b) AMOUNTS SOURCED WITHOUT THE UNITED
 2 STATES.—Subsection (a) of section 862 is amended by
 3 striking “and” at the end of paragraph (7), by striking
 4 the period at the end of paragraph (8) and inserting “;
 5 and”, and by adding at the end the following new para-
 6 graph:

7 “(9) amounts received with respect to guaran-
 8 tees other than those derived from sources within
 9 the United States as provided in section 861(a)(9).”.

10 (c) CONFORMING AMENDMENT.—Clause (ii) of sec-
 11 tion 864(c)(4)(B) is amended by striking “dividends or in-
 12 terest” and inserting “dividends, interest, or amounts with
 13 respect to guarantees”.

14 (d) EFFECTIVE DATE.—The amendments made by
 15 this section shall apply to guarantees issued after the date
 16 of the enactment of this Act.

17 **SEC. 10. LIMITATION ON EXTENSION OF STATUTE OF LIMITATIONS FOR FAILURE TO NOTIFY SECRETARY OF CERTAIN FOREIGN TRANSFERS.**

18
 19
 20 (a) IN GENERAL.—Paragraph (8) of section 6501(c)
 21 is amended—

22 (1) by striking “In the case of any information”
 23 and inserting the following:

24 “(A) IN GENERAL.—In the case of any in-
 25 formation”; and

1 (2) by adding at the end the following:

2 “(B) APPLICATION TO FAILURES DUE TO
3 REASONABLE CAUSE.—If the failure to furnish
4 the information referred to in subparagraph (A)
5 is due to reasonable cause and not willful ne-
6 glect, subparagraph (A) shall apply only to the
7 item or items related to such failure.”.

8 (b) EFFECTIVE DATE.—The amendments made by
9 this section shall take effect as if included in section 513
10 of the Hiring Incentives to Restore Employment Act.

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