

111TH CONGRESS
2D SESSION

H. R. 5982

To amend the Internal Revenue Code of 1986 to repeal the expansion of certain information reporting requirements to corporations and to payments for property, to eliminate loopholes which encourage companies to move operations offshore, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 30, 2010

Mr. LEVIN (for himself, Mr. OWENS, Mr. MURPHY of New York, Mr. STARK, Mr. LEWIS of Georgia, Mr. BLUMENAUER, Mr. PASCRELL, Ms. BERKLEY, Mr. CROWLEY, Mr. VAN HOLLEN, Mr. DAVIS of Illinois, Mr. ARCURI, Mr. BARROW, Mr. GARAMENDI, Ms. GIFFORDS, Mr. HILL, Mr. KRATOVIL, Mr. PERRIELLO, Mr. KIND, Mr. ISRAEL, Ms. CHU, and Ms. KOSMAS) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned; which was considered and failed of passage

A BILL

To amend the Internal Revenue Code of 1986 to repeal the expansion of certain information reporting requirements to corporations and to payments for property, to eliminate loopholes which encourage companies to move operations offshore, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE;**
 2 **TABLE OF CONTENTS.**

3 (a) SHORT TITLE.—This Act may be cited as the
 4 “Small Business Tax Relief Act of 2010”.

5 (b) AMENDMENT OF 1986 CODE.—Except as other-
 6 wise expressly provided, whenever in this Act an amend-
 7 ment or repeal is expressed in terms of an amendment
 8 to, or repeal of, a section or other provision, the reference
 9 shall be considered to be made to a section or other provi-
 10 sion of the Internal Revenue Code of 1986.

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

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

**TITLE I—REPEAL OF CERTAIN INFORMATION REPORTING
 REQUIREMENTS**

Sec. 101. Repeal of expansion of certain information reporting requirements to corporations and to payments for property.

TITLE II—REVENUE PROVISIONS

Subtitle A—Foreign Provisions

Sec. 201. Rules to prevent splitting foreign tax credits from the income to which they relate.

Sec. 202. Denial of foreign tax credit with respect to foreign income not subject to United States taxation by reason of covered asset acquisitions.

Sec. 203. Separate application of foreign tax credit limitation, etc., to items resourced under treaties.

Sec. 204. Limitation on the amount of foreign taxes deemed paid with respect to section 956 inclusions.

Sec. 205. Special rule with respect to certain redemptions by foreign subsidiaries.

Sec. 206. Modification of affiliation rules for purposes of rules allocating interest expense.

Sec. 207. Termination of special rules for interest and dividends received from persons meeting the 80-percent foreign business requirements.

Sec. 208. Source rules for income on guarantees.

Sec. 209. Limitation on extension of statute of limitations for failure to notify Secretary of certain foreign transfers.

Subtitle B—Other Revenue Provisions

Sec. 211. Required minimum 10-year term, etc., for grantor retained annuity trusts.

Sec. 212. Crude tall oil ineligible for cellulosic biofuel producer credit.

Sec. 213. Increase in information return penalties.

Sec. 214. Treatment of securities of a controlled corporation exchanged for assets in certain reorganizations.

TITLE III—PAYGO COMPLIANCE

Sec. 301. Paygo compliance.

1 TITLE I—REPEAL OF CERTAIN
2 INFORMATION REPORTING
3 REQUIREMENTS

4 SEC. 101. REPEAL OF EXPANSION OF CERTAIN INFORMA-
5 TION REPORTING REQUIREMENTS TO COR-
6 PORATIONS AND TO PAYMENTS FOR PROP-
7 ERTY.

8 Section 9006 of the Patient Protection and Afford-
9 able Care Act is repealed. Each provision of law amended
10 by such section is amended to read as such provision
11 would read if such section had never been enacted.

12 TITLE II—REVENUE PROVISIONS
13 Subtitle A—Foreign Provisions

14 SEC. 201. RULES TO PREVENT SPLITTING FOREIGN TAX
15 CREDITS FROM THE INCOME TO WHICH THEY
16 RELATE.

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

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

3 “(a) IN GENERAL.—If there is a foreign tax credit
 4 splitting event with respect to a foreign income tax paid
 5 or accrued by the taxpayer, such tax shall not be taken
 6 into account for purposes of this title before the taxable
 7 year in which the related income is taken into account
 8 under this chapter by the taxpayer.

9 “(b) SPECIAL RULES WITH RESPECT TO SECTION
 10 902 CORPORATIONS.—If there is a foreign tax credit split-
 11 ting event with respect to a foreign income tax paid or
 12 accrued by a section 902 corporation, such tax shall not
 13 be taken into account—

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

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

17 before the taxable year in which the related income is
 18 taken into account under this chapter by such section 902
 19 corporation or a domestic corporation which meets the
 20 ownership requirements of subsection (a) or (b) of section
 21 902 with respect to such section 902 corporation.

22 “(c) SPECIAL RULES.—For purposes of this sec-
 23 tion—

24 “(1) APPLICATION TO PARTNERSHIPS, ETC.—In
 25 the case of a partnership, subsections (a) and (b)
 26 shall be applied at the partner level. Except as oth-

erwise provided by the Secretary, a rule similar to the rule of the preceding sentence shall apply in the case of any S corporation or trust.

“(2) TREATMENT OF FOREIGN TAXES AFTER SUSPENSION.—In the case of any foreign income tax not taken into account by reason of subsection (a) or (b), except as otherwise provided by the Secretary, such tax shall be so taken into account in the taxable year referred to in such subsection (other than for purposes of section 986(a)) as a foreign income tax paid or accrued in such taxable year.

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

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

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

“(3) RELATED INCOME.—The term ‘related income’ means, with respect to any portion of any foreign income tax, the income (or, as appropriate,

1 earnings and profits) to which such portion of for-
2 eign income tax relates.

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

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

10 “(B) any person which holds, directly or
11 indirectly, at least a 10 percent ownership in-
12 terest (determined by vote or value) in the
13 payor,

14 “(C) any person which bears a relationship
15 to the payor described in section 267(b) or
16 707(b), and

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

19 “(5) SECTION 902 CORPORATION.—The term
20 ‘section 902 corporation’ means any foreign corpora-
21 tion with respect to which one or more domestic cor-
22 porations meets the ownership requirements of sub-
23 section (a) or (b) of section 902.

24 “(e) REGULATIONS.—The Secretary may issue such
25 regulations or other guidance as is necessary or appro-

1 puate to carry out the purposes of this section, including
 2 regulations or other guidance which provides—

3 “(1) appropriate exceptions from the provisions
 4 of this section, and

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

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

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

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

12 (1) foreign income taxes (as defined in section
 13 909(d) of the Internal Revenue Code of 1986, as
 14 added by this section) paid or accrued after Decem-
 15 ber 31, 2010; and

16 (2) foreign income taxes (as so defined) paid or
 17 accrued by a section 902 corporation (as so defined)
 18 on or before such date (and not deemed paid under
 19 section 902(a) or 960 of such Code on or before
 20 such date), but only for purposes of applying sec-
 21 tions 902 and 960 with respect to periods after such
 22 date.

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

4 **SEC. 202. DENIAL OF FOREIGN TAX CREDIT WITH RESPECT**
 5 **TO FOREIGN INCOME NOT SUBJECT TO**
 6 **UNITED STATES TAXATION BY REASON OF**
 7 **COVERED ASSET ACQUISITIONS.**

8 (a) IN GENERAL.—Section 901 is amended by redes-
 9 ignating subsection (m) as subsection (n) and by inserting
 10 after subsection (l) the following new subsection:

11 “(m) DENIAL OF FOREIGN TAX CREDIT WITH RE-
 12 SPECT TO FOREIGN INCOME NOT SUBJECT TO UNITED
 13 STATES TAXATION BY REASON OF COVERED ASSET AC-
 14 QUISITIONS.—

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

20 “(A) shall not be taken into account in de-
 21 termining the credit allowed under subsection
 22 (a), and

23 “(B) in the case of a foreign income tax
 24 paid by a section 902 corporation (as defined in

1 section 909(d)(5)), shall not be taken into ac-
2 count for purposes of section 902 or 960.

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

6 “(A) a qualified stock purchase (as defined
7 in section 338(d)(3)) to which section 338(a)
8 applies,

9 “(B) any transaction which—

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

12 “(ii) is treated as the acquisition of
13 stock of a corporation (or is disregarded)
14 for purposes of the foreign income taxes of
15 the relevant jurisdiction,

16 “(C) any acquisition of an interest in a
17 partnership which has an election in effect
18 under section 754, and

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

21 “(3) DISQUALIFIED PORTION.—For purposes of
22 this section—

23 “(A) IN GENERAL.—The term ‘disqualified
24 portion’ means, with respect to any covered

1 asset acquisition, for any taxable year, the ratio
2 (expressed as a percentage) of—

3 “(i) the aggregate basis differences
4 (but not below zero) allocable to such tax-
5 able year under subparagraph (B) with re-
6 spect to all relevant foreign assets, divided
7 by

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

17 “(B) ALLOCATION OF BASIS DIF-
18 FERENCE.—For purposes of subparagraph
19 (A)(i)—

20 “(i) IN GENERAL.—The basis dif-
21 ference with respect to any relevant foreign
22 asset shall be allocated to taxable years
23 using the applicable cost recovery method
24 under this chapter.

1 “(ii) SPECIAL RULE FOR DISPOSITION
2 OF ASSETS.—Except as otherwise provided
3 by the Secretary, in the case of the disposi-
4 tion of any relevant foreign asset—

5 “(I) the basis difference allocated
6 to the taxable year which includes the
7 date of such disposition shall be the
8 excess of the basis difference with re-
9 spect to such asset over the aggregate
10 basis difference with respect to such
11 asset which has been allocated under
12 clause (i) to all prior taxable years,
13 and

14 “(II) no basis difference with re-
15 spect to such asset shall be allocated
16 under clause (i) to any taxable year
17 thereafter.

18 “(C) BASIS DIFFERENCE.—

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

22 “(I) the adjusted basis of such
23 asset immediately after the covered
24 asset acquisition, over

1 “(II) the adjusted basis of such
2 asset immediately before the covered
3 asset acquisition.

4 “(ii) BUILT-IN LOSS ASSETS.—In the
5 case of a relevant foreign asset with re-
6 spect to which the amount described in
7 clause (i)(II) exceeds the amount described
8 in clause (i)(I), such excess shall be taken
9 into account under this subsection as a
10 basis difference of a negative amount.

11 “(iii) SPECIAL RULE FOR SECTION 338
12 ELECTIONS.—In the case of a covered
13 asset acquisition described in paragraph
14 (2)(A), the covered asset acquisition shall
15 be treated for purposes of this subpara-
16 graph as occurring at the close of the ac-
17 quisition date (as defined in section
18 338(h)(2)).

19 “(4) RELEVANT FOREIGN ASSETS.—For pur-
20 poses of this section, the term ‘relevant foreign
21 asset’ means, with respect to any covered asset ac-
22 quisition, any asset (including any goodwill, going
23 concern value, or other intangible) with respect to
24 such acquisition if income, deduction, gain, or loss
25 attributable to such asset is taken into account in

1 determining the foreign income tax referred to in
2 paragraph (1).

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

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

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

19 (b) EFFECTIVE DATE.—

20 (1) IN GENERAL.—Except as provided in para-
21 graph (2), the amendments made by this section
22 shall apply to covered asset acquisitions (as defined
23 in section 901(m)(2) of the Internal Revenue Code
24 of 1986, as added by this section) after December
25 31, 2010.

1 (2) TRANSITION RULE.—The amendments
 2 made by this section shall not apply to any covered
 3 asset acquisition (as so defined) with respect to
 4 which the transferor and the transferee are not re-
 5 lated if such acquisition is—

6 (A) made pursuant to a written agreement
 7 which was binding on May 20, 2010, and at all
 8 times thereafter;

9 (B) described in a ruling request submitted
 10 to the Internal Revenue Service on or before
 11 such date; or

12 (C) described on or before such date in a
 13 public announcement or in a filing with the Se-
 14 curities and Exchange Commission.

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

20 **SEC. 203. SEPARATE APPLICATION OF FOREIGN TAX CRED-**
 21 **IT LIMITATION, ETC., TO ITEMS RESOURCED**
 22 **UNDER TREATIES.**

23 (a) IN GENERAL.—Subsection (d) of section 904 is
 24 amended by redesignating paragraph (6) as paragraph (7)

1 and by inserting after paragraph (5) the following new
2 paragraph:

3 “(6) SEPARATE APPLICATION TO ITEMS
4 RESOURCED UNDER TREATIES.—

5 “(A) IN GENERAL.—If—

6 “(i) without regard to any treaty obli-
7 gation of the United States, any item of
8 income would be treated as derived from
9 sources within the United States,

10 “(ii) under a treaty obligation of the
11 United States, such item would be treated
12 as arising from sources outside the United
13 States, and

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

19 “(B) COORDINATION WITH OTHER PROVI-
20 SIONS.—This paragraph shall not apply to any
21 item of income to which subsection (h)(10) or
22 section 865(h) applies.

23 “(C) REGULATIONS.—The Secretary may
24 issue such regulations or other guidance as is
25 necessary or appropriate to carry out the pur-

1 poses of this paragraph, including regulations
 2 or other guidance which provides that related
 3 items of income may be aggregated for pur-
 4 poses of this paragraph.”.

5 (b) **EFFECTIVE DATE.**—The amendments made by
 6 this section shall apply to taxable years beginning after
 7 the date of the enactment of this Act.

8 **SEC. 204. LIMITATION ON THE AMOUNT OF FOREIGN TAXES**
 9 **DEEMED PAID WITH RESPECT TO SECTION**
 10 **956 INCLUSIONS.**

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

13 “(c) **LIMITATION WITH RESPECT TO SECTION 956**
 14 **INCLUSIONS.**—

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

1 income taxes which would have been deemed to have
2 been paid during the taxable year by such domestic
3 corporation if cash in an amount equal to the
4 amount of such inclusion in gross income were dis-
5 tributed as a series of distributions (determined
6 without regard to any foreign taxes which would be
7 imposed on an actual distribution) through the chain
8 of ownership which begins with such foreign cor-
9 poration and ends with such domestic corporation.

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

17 (b) EFFECTIVE DATE.—The amendment made by
18 this section shall apply to acquisitions of United States
19 property (as defined in section 956(c) of the Internal Rev-
20 enue Code of 1986) after December 31, 2010.

21 **SEC. 205. SPECIAL RULE WITH RESPECT TO CERTAIN RE-**
22 **DEMPTIONS BY FOREIGN SUBSIDIARIES.**

23 (a) IN GENERAL.—Paragraph (5) of section 304(b)
24 is amended by redesignating subparagraph (B) as sub-

1 paragraph (C) and by inserting after subparagraph (A)
2 the following new subparagraph:

3 “(B) SPECIAL RULE IN CASE OF FOREIGN
4 ACQUIRING CORPORATION.—In the case of any
5 acquisition to which subsection (a) applies in
6 which the acquiring corporation is a foreign
7 corporation, no earnings and profits shall be
8 taken into account under paragraph (2)(A)
9 (and subparagraph (A) shall not apply) if more
10 than 50 percent of the dividends arising from
11 such acquisition (determined without regard to
12 this subparagraph) would neither—

13 “(i) be subject to tax under this chap-
14 ter for the taxable year in which the divi-
15 dends arise, nor

16 “(ii) be includible in the earnings and
17 profits of a controlled foreign corporation
18 (as defined in section 957 and without re-
19 gard to section 953(c)).”.

20 (b) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to acquisitions after December 31,
22 2010.

1 **SEC. 206. MODIFICATION OF AFFILIATION RULES FOR PUR-**
2 **POSES OF RULES ALLOCATING INTEREST EX-**
3 **PENSE.**

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

9 “(i) more than 50 percent of the gross
10 income of such foreign corporation for the
11 taxable year is effectively connected with
12 the conduct of a trade or business within
13 the United States, and

14 “(ii) at least 80 percent of either the
15 vote or value of all outstanding stock of
16 such foreign corporation is owned directly
17 or indirectly by members of the affiliated
18 group (determined with regard to this sen-
19 tence).”.

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

1 **SEC. 207. TERMINATION OF SPECIAL RULES FOR INTEREST**
2 **AND DIVIDENDS RECEIVED FROM PERSONS**
3 **MEETING THE 80-PERCENT FOREIGN BUSI-**
4 **NESS REQUIREMENTS.**

5 (a) IN GENERAL.—Paragraph (1) of section 861(a)
6 is amended by striking subparagraph (A) and by redesignig-
7 nating subparagraphs (B) and (C) as subparagraphs (A)
8 and (B), respectively.

9 (b) GRANDFATHER RULE WITH RESPECT TO WITH-
10 HOLDING ON INTEREST AND DIVIDENDS RECEIVED FROM
11 PERSONS MEETING THE 80-PERCENT FOREIGN BUSI-
12 NESS REQUIREMENTS.—

13 (1) IN GENERAL.—Subparagraph (B) of section
14 871(i)(2) is amended to read as follows:

15 “(B) The active foreign business percent-
16 age of—

17 “(i) any dividend paid by an existing
18 80/20 company, and

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

21 (2) DEFINITIONS AND SPECIAL RULES.—Sec-
22 tion 871 is amended by redesignating subsections (l)
23 and (m) as subsections (m) and (n), respectively,
24 and by inserting after subsection (k) the following
25 new subsection:

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

4 “(1) EXISTING 80/20 COMPANY.—

5 “(A) IN GENERAL.—The term ‘existing 80/
6 20 company’ means any corporation if—

7 “(i) such corporation met the 80-per-
8 cent foreign business requirements of sec-
9 tion 861(c)(1) (as in effect before the date
10 of the enactment of this subsection) for
11 such corporation’s last taxable year begin-
12 ning before January 1, 2011,

13 “(ii) such corporation meets the 80-
14 percent foreign business requirements of
15 subparagraph (B) with respect to each tax-
16 able year after the taxable year referred to
17 in clause (i), and

18 “(iii) there has not been an addition
19 of a substantial line of business with re-
20 spect to such corporation after the date of
21 the enactment of this subsection.

22 “(B) FOREIGN BUSINESS REQUIRE-
23 MENTS.—

24 “(i) IN GENERAL.—Except as pro-
25 vided in clause (iv), a corporation meets

1 the 80-percent foreign business require-
2 ments of this subparagraph if it is shown
3 to the satisfaction of the Secretary that at
4 least 80 percent of the gross income from
5 all sources of such corporation for the test-
6 ing period is active foreign business in-
7 come.

8 “(ii) ACTIVE FOREIGN BUSINESS IN-
9 COME.—For purposes of clause (i), the
10 term ‘active foreign business income’
11 means gross income which—

12 “(I) is derived from sources out-
13 side the United States (as determined
14 under this subchapter), and

15 “(II) is attributable to the active
16 conduct of a trade or business in a
17 foreign country or possession of the
18 United States.

19 “(iii) TESTING PERIOD.—For pur-
20 poses of this subsection, the term ‘testing
21 period’ means the 3-year period ending
22 with the close of the taxable year of the
23 corporation preceding the payment (or
24 such part of such period as may be appli-
25 cable). If the corporation has no gross in-

1 come for such 3-year period (or part there-
2 of), the testing period shall be the taxable
3 year in which the payment is made.

4 “(iv) TRANSITION RULE.—In the case
5 of a taxable year for which the testing pe-
6 riod includes 1 or more taxable years be-
7 ginning before January 1, 2011—

8 “(I) a corporation meets the 80-
9 percent foreign business requirements
10 of this subparagraph if and only if the
11 weighted average of—

12 “(aa) the percentage of the
13 corporation’s gross income from
14 all sources that is active foreign
15 business income (as defined in
16 subparagraph (B) of section
17 861(c)(1) (as in effect before the
18 date of the enactment of this
19 subsection)) for the portion of
20 the testing period that includes
21 taxable years beginning before
22 January 1, 2011, and

23 “(bb) the percentage of the
24 corporation’s gross income from
25 all sources that is active foreign

1 business income (as defined in
 2 clause (ii) of this subparagraph)
 3 for the portion of the testing pe-
 4 riod, if any, that includes taxable
 5 years beginning on or after Janu-
 6 ary 1, 2011,

7 is at least 80 percent, and

8 “(II) the active foreign business
 9 percentage for such taxable year shall
 10 equal the weighted average percentage
 11 determined under subclause (I).

12 “(2) ACTIVE FOREIGN BUSINESS PERCENT-
 13 AGE.—Except as provided in paragraph (1)(B)(iv),
 14 the term ‘active foreign business percentage’ means,
 15 with respect to any existing 80/20 company, the per-
 16 centage which—

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

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

21 “(3) AGGREGATION RULES.—For purposes of
 22 applying paragraph (1) (other than subparagraphs
 23 (A)(i) and (B)(iv) thereof) and paragraph (2)—

24 “(A) IN GENERAL.—The corporation re-
 25 ferred to in paragraph (1)(A) and all of such

1 corporation's subsidiaries shall be treated as
2 one corporation.

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

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

17 (c) CONFORMING AMENDMENTS.—

18 (1) Section 861 is amended by striking sub-
19 section (c) and by redesignating subsections (d), (e),
20 and (f) as subsections (c), (d), and (e), respectively.

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

23 “(9) TREATMENT OF CERTAIN DOMESTIC COR-
24 PORATIONS.—In the case of any dividend treated as
25 not from sources within the United States under

1 section 861(a)(2)(A), the corporation paying such
2 dividend shall be treated for purposes of this sub-
3 section as a United States-owned foreign corpora-
4 tion.”.

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

9 (d) EFFECTIVE DATE.—

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

14 (2) GRANDFATHER RULE FOR OUTSTANDING
15 DEBT OBLIGATIONS.—

16 (A) IN GENERAL.—The amendments made
17 by this section shall not apply to payments of
18 interest on obligations issued before the date of
19 the enactment of this Act.

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

1 (C) SIGNIFICANT MODIFICATIONS TREAT-
2 ED AS NEW ISSUES.—For purposes of subpara-
3 graph (A), a significant modification of the
4 terms of any obligation (including any extension
5 of the term of such obligation) shall be treated
6 as a new issue.

7 **SEC. 208. SOURCE RULES FOR INCOME ON GUARANTEES.**

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

11 “(9) GUARANTEES.—Amounts received, directly
12 or indirectly, from—

13 “(A) a noncorporate resident or domestic
14 corporation for the provision of a guarantee of
15 any indebtedness of such resident or corpora-
16 tion, or

17 “(B) any foreign person for the provision
18 of a guarantee of any indebtedness of such per-
19 son, if such amount is connected with income
20 which is effectively connected (or treated as ef-
21 fectively connected) with the conduct of a trade
22 or business in the United States.”.

23 (b) AMOUNTS SOURCED WITHOUT THE UNITED
24 STATES.—Subsection (a) of section 862 is amended by
25 striking “and” at the end of paragraph (7), by striking

1 the period at the end of paragraph (8) and inserting “;
 2 and”, and by adding at the end the following new para-
 3 graph:

4 “(9) amounts received, directly or indirectly,
 5 from a foreign person for the provision of a guar-
 6 antee of indebtedness of such person other than
 7 amounts which are derived from sources within the
 8 United States as provided in section 861(a)(9).”.

9 (c) CONFORMING AMENDMENT.—Clause (ii) of sec-
 10 tion 864(c)(4)(B) is amended by striking “dividends or in-
 11 terest” and inserting “dividends, interest, or amounts re-
 12 ceived for the provision of guarantees of indebtedness”.

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

16 **SEC. 209. LIMITATION ON EXTENSION OF STATUTE OF LIMI-**
 17 **TATIONS FOR FAILURE TO NOTIFY SEC-**
 18 **RETARY OF CERTAIN FOREIGN TRANSFERS.**

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

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

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

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

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

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

10 **Subtitle B—Other Revenue** 11 **Provisions**

12 **SEC. 211. REQUIRED MINIMUM 10-YEAR TERM, ETC., FOR** 13 **GRANTOR RETAINED ANNUITY TRUSTS.**

14 (a) IN GENERAL.—Subsection (b) of section 2702 is
 15 amended—

16 (1) by redesignating paragraphs (1), (2) and
 17 (3) as subparagraphs (A), (B), and (C), respectively,
 18 and by moving such subparagraphs (as so redesign-
 19 ated) 2 ems to the right;

20 (2) by striking “For purposes of” and inserting
 21 the following:

22 “(1) IN GENERAL.—For purposes of”;

23 (3) by striking “paragraph (1) or (2)” in para-
 24 graph (1)(C) (as so redesignated) and inserting
 25 “subparagraph (A) or (B)”; and

1 (4) by adding at the end the following new
2 paragraph:

3 “(2) ADDITIONAL REQUIREMENTS WITH RE-
4 SPECT TO GRANTOR RETAINED ANNUITIES.—For
5 purposes of subsection (a), in the case of an interest
6 described in paragraph (1)(A) (determined without
7 regard to this paragraph) which is retained by the
8 transferor, such interest shall be treated as de-
9 scribed in such paragraph only if—

10 “(A) the right to receive the fixed amounts
11 referred to in such paragraph is for a term of
12 not less than 10 years,

13 “(B) such fixed amounts, when determined
14 on an annual basis, do not decrease relative to
15 any prior year during the first 10 years of the
16 term referred to in subparagraph (A), and

17 “(C) the remainder interest has a value
18 greater than zero determined as of the time of
19 the transfer.”.

20 (b) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to transfers made after the date
22 of the enactment of this Act.

1 **SEC. 212. CRUDE TALL OIL INELIGIBLE FOR CELLULOSIC**
 2 **BIOFUEL PRODUCER CREDIT.**

3 (a) IN GENERAL.—Clause (iii) of section 40(b)(6)(E)
 4 is amended—

5 (1) by striking “or” at the end of subclause (I);

6 (2) by striking the period at the end of sub-
 7 clause (II) and inserting “, or”;

8 (3) by adding at the end the following new sub-
 9 clause:

10 “(III) such fuel has an acid num-
 11 ber greater than 25.”; and

12 (4) by striking “UNPROCESSED” in the heading
 13 and inserting “CERTAIN”.

14 (b) EFFECTIVE DATE.—The amendment made by
 15 this section shall apply to fuels sold or used on or after
 16 January 1, 2010.

17 **SEC. 213. INCREASE IN INFORMATION RETURN PENALTIES.**

18 (a) FAILURE TO FILE CORRECT INFORMATION RE-
 19 TURNS.—

20 (1) IN GENERAL.—Subsections (a)(1),
 21 (b)(1)(A), and (b)(2)(A) of section 6721 are each
 22 amended by striking “\$50” and inserting “\$100”.

23 (2) AGGREGATE ANNUAL LIMITATION.—Sub-
 24 sections (a)(1), (d)(1)(A), and (e)(3)(A) of section
 25 6721 are each amended by striking “\$250,000” and
 26 inserting “\$1,500,000”.

1 (b) REDUCTION WHERE CORRECTION WITHIN 30
2 DAYS.—

3 (1) IN GENERAL.—Subparagraph (A) of section
4 6721(b)(1) is amended by striking “\$15” and insert-
5 ing “\$30”.

6 (2) AGGREGATE ANNUAL LIMITATION.—Sub-
7 sections (b)(1)(B) and (d)(1)(B) of section 6721 are
8 each amended by striking “\$75,000” and inserting
9 “\$250,000”.

10 (c) REDUCTION WHERE CORRECTION ON OR BE-
11 FORE AUGUST 1.—

12 (1) IN GENERAL.—Subparagraph (A) of section
13 6721(b)(2) is amended by striking “\$30” and insert-
14 ing “\$60”.

15 (2) AGGREGATE ANNUAL LIMITATION.—Sub-
16 sections (b)(2)(B) and (d)(1)(C) of section 6721 are
17 each amended by striking “\$150,000” and inserting
18 “\$500,000”.

19 (d) AGGREGATE ANNUAL LIMITATIONS FOR PER-
20 SONS WITH GROSS RECEIPTS OF NOT MORE THAN
21 \$5,000,000.—

22 (1) IN GENERAL.—Paragraph (1) of section
23 6721(d) is amended—

24 (A) by striking “\$100,000” in subpara-
25 graph (A) and inserting “\$500,000”;

1 (B) by striking “\$25,000” in subpara-
 2 graph (B) and inserting “\$75,000”; and

3 (C) by striking “\$50,000” in subparagraph
 4 (C) and inserting “\$200,000”.

5 (2) TECHNICAL AMENDMENT.—Paragraph (1)
 6 of section 6721(d) is amended by striking “such tax-
 7 able year” and inserting “such calendar year”.

8 (e) PENALTY IN CASE OF INTENTIONAL DIS-
 9 REGARD.—Paragraph (2) of section 6721(e) is amended
 10 by striking “\$100” and inserting “\$250”.

11 (f) ADJUSTMENT FOR INFLATION.—Section 6721 is
 12 amended by adding at the end the following new sub-
 13 section:

14 “(f) ADJUSTMENT FOR INFLATION.—

15 “(1) IN GENERAL.—In the case of any calendar
 16 year beginning after 2014, each of the dollar
 17 amounts under subsections (a), (b), (d) (other than
 18 paragraph (2)(A) thereof), and (e) shall be increased
 19 by such dollar amount multiplied by the cost-of-liv-
 20 ing adjustment determined under section 1(f)(3) de-
 21 termined by substituting ‘calendar year 2011’ for
 22 ‘calendar year 1992’ in subparagraph (B) thereof.

23 “(2) ADDITIONAL ADJUSTMENTS MADE ONLY
 24 EVERY FIFTH YEAR.—Notwithstanding paragraph
 25 (1), in the case of any calendar year beginning after

1 2015 (other than every fifth calendar after 2015),
 2 each increase determined under paragraph (1) shall
 3 not exceed the amount of such increase determined
 4 for the preceding year.

5 “(3) ROUNDING.—If any amount adjusted
 6 under paragraph (1)—

7 “(A) is not less than \$75,000 and is not
 8 a multiple of \$500, such amount shall be
 9 rounded to the next lowest multiple of \$500,
 10 and

11 “(B) is not described in subparagraph (A)
 12 and is not a multiple of \$10, such amount shall
 13 be rounded to the next lowest multiple of \$10.”.

14 (g) FAILURE TO FURNISH CORRECT PAYEE STATE-
 15 MENTS.—Section 6722 is amended to read as follows:

16 **“SEC. 6722. FAILURE TO FURNISH CORRECT PAYEE STATE-**
 17 **MENTS.**

18 “(a) IMPOSITION OF PENALTY.—

19 “(1) GENERAL RULE.—In the case of each fail-
 20 ure described in paragraph (2) by any person with
 21 respect to a payee statement, such person shall pay
 22 a penalty of \$100 for each statement with respect to
 23 which such a failure occurs, but the total amount
 24 imposed on such person for all such failures during
 25 any calendar year shall not exceed \$1,500,000.

1 “(2) FAILURES SUBJECT TO PENALTY.—For
 2 purposes of paragraph (1), the failures described in
 3 this paragraph are—

4 “(A) any failure to furnish a payee state-
 5 ment on or before the date prescribed therefor
 6 to the person to whom such statement is re-
 7 quired to be furnished, and

8 “(B) any failure to include all of the infor-
 9 mation required to be shown on a payee state-
 10 ment or the inclusion of incorrect information.

11 “(b) REDUCTION WHERE CORRECTION IN SPECIFIED
 12 PERIOD.—

13 “(1) CORRECTION WITHIN 30 DAYS.—If any
 14 failure described in subsection (a)(2) is corrected on
 15 or before the day 30 days after the required filing
 16 date—

17 “(A) the penalty imposed by subsection (a)
 18 shall be \$30 in lieu of \$100, and

19 “(B) the total amount imposed on the per-
 20 son for all such failures during any calendar
 21 year which are so corrected shall not exceed
 22 \$250,000.

23 “(2) FAILURES CORRECTED ON OR BEFORE AU-
 24 GUST 1.—If any failure described in subsection
 25 (a)(2) is corrected after the 30th day referred to in

1 paragraph (1) but on or before August 1 of the cal-
2 endar year in which the required filing date occurs—

3 “(A) the penalty imposed by subsection (a)
4 shall be \$60 in lieu of \$100, and

5 “(B) the total amount imposed on the per-
6 son for all such failures during the calendar
7 year which are so corrected shall not exceed
8 \$500,000.

9 “(c) EXCEPTION FOR DE MINIMIS FAILURES.—

10 “(1) IN GENERAL.—If—

11 “(A) a payee statement is furnished to the
12 person to whom such statement is required to
13 be furnished,

14 “(B) there is a failure described in sub-
15 section (a)(2)(B) (determined after the applica-
16 tion of section 6724(a)) with respect to such
17 statement, and

18 “(C) such failure is corrected on or before
19 August 1 of the calendar year in which the re-
20 quired filing date occurs,

21 for purposes of this section, such statement shall be
22 treated as having been furnished with all of the cor-
23 rect required information.

1 “(2) LIMITATION.—The number of payee state-
 2 ments to which paragraph (1) applies for any cal-
 3 endar year shall not exceed the greater of—

4 “(A) 10, or

5 “(B) one-half of 1 percent of the total
 6 number of payee statements required to be filed
 7 by the person during the calendar year.

8 “(d) LOWER LIMITATIONS FOR PERSONS WITH
 9 GROSS RECEIPTS OF NOT MORE THAN \$5,000,000.—

10 “(1) IN GENERAL.—If any person meets the
 11 gross receipts test of paragraph (2) with respect to
 12 any calendar year, with respect to failures during
 13 such calendar year—

14 “(A) subsection (a)(1) shall be applied by
 15 substituting ‘\$500,000’ for ‘\$1,500,000’,

16 “(B) subsection (b)(1)(B) shall be applied
 17 by substituting ‘\$75,000’ for ‘\$250,000’, and

18 “(C) subsection (b)(2)(B) shall be applied
 19 by substituting ‘\$200,000’ for ‘\$500,000’.

20 “(2) GROSS RECEIPTS TEST.—A person meets
 21 the gross receipts test of this paragraph if such per-
 22 son meets the gross receipts test of section
 23 6721(d)(2).

24 “(e) PENALTY IN CASE OF INTENTIONAL DIS-
 25 REGARD.—If 1 or more failures to which subsection (a)

1 applies are due to intentional disregard of the requirement
2 to furnish a payee statement (or the correct information
3 reporting requirement), then, with respect to each such
4 failure—

5 “(1) subsections (b), (c), and (d) shall not
6 apply,

7 “(2) the penalty imposed under subsection
8 (a)(1) shall be \$250, or, if greater—

9 “(A) in the case of a payee statement
10 other than a statement required under section
11 6045(b), 6041A(e) (in respect of a return re-
12 quired under section 6041A(b)), 6050H(d),
13 6050J(e), 6050K(b), or 6050L(c), 10 percent
14 of the aggregate amount of the items required
15 to be reported correctly, or

16 “(B) in the case of a payee statement re-
17 quired under section 6045(b), 6050K(b), or
18 6050L(c), 5 percent of the aggregate amount of
19 the items required to be reported correctly, and

20 “(3) in the case of any penalty determined
21 under paragraph (2)—

22 “(A) the \$1,500,000 limitation under sub-
23 section (a) shall not apply, and

1 “(B) such penalty shall not be taken into
2 account in applying such limitation to penalties
3 not determined under paragraph (2).

4 “(f) ADJUSTMENT FOR INFLATION.—

5 “(1) IN GENERAL.—In the case of any calendar
6 year beginning after 2014, each of the dollar
7 amounts under subsections (a), (b), (d)(1), and (e)
8 shall be increased by such dollar amount multiplied
9 by the cost-of-living adjustment determined under
10 section 1(f)(3) determined by substituting ‘calendar
11 year 2011’ for ‘calendar year 1992’ in subparagraph
12 (B) thereof.

13 “(2) ADDITIONAL ADJUSTMENTS MADE ONLY
14 EVERY FIFTH YEAR.—Notwithstanding paragraph
15 (1), in the case of any calendar year beginning after
16 2015 (other than every fifth calendar after 2015),
17 each increase determined under paragraph (1) shall
18 not exceed the amount of such increase determined
19 for the preceding year.

20 “(3) ROUNDING.—If any amount adjusted
21 under paragraph (1)—

22 “(A) is not less than \$75,000 and is not
23 a multiple of \$500, such amount shall be
24 rounded to the next lowest multiple of \$500,
25 and

1 “(B) is not described in subparagraph (A)
 2 and is not a multiple of \$10, such amount shall
 3 be rounded to the next lowest multiple of \$10.”.

4 (h) EFFECTIVE DATE.—The amendments made by
 5 this section shall apply with respect to information returns
 6 required to be filed on or after January 1, 2011.

7 **SEC. 214. TREATMENT OF SECURITIES OF A CONTROLLED**
 8 **CORPORATION EXCHANGED FOR ASSETS IN**
 9 **CERTAIN REORGANIZATIONS.**

10 (a) IN GENERAL.—Section 361 is amended by adding
 11 at the end the following new subsection:

12 “(d) SPECIAL RULES FOR TRANSACTIONS INVOLVING
 13 SECTION 355 DISTRIBUTIONS.—In the case of a reorga-
 14 nization described in section 368(a)(1)(D) with respect to
 15 which stock or securities of the corporation to which the
 16 assets are transferred are distributed in a transaction
 17 which qualifies under section 355—

18 “(1) this section shall be applied by substituting
 19 ‘stock other than nonqualified preferred stock (as
 20 defined in section 351(g)(2))’ for ‘stock or securities’
 21 in subsections (a) and (b)(1), and

22 “(2) the first sentence of subsection (b)(3) shall
 23 apply only to the extent that the sum of the money
 24 and the fair market value of the other property
 25 transferred to such creditors does not exceed the ad-

1 justed bases of such assets transferred (reduced by
2 the amount of the liabilities assumed (within the
3 meaning of section 357(c))).”.

4 (b) CONFORMING AMENDMENT.—Paragraph (3) of
5 section 361(b) is amended by striking the last sentence.

6 (c) EFFECTIVE DATE.—

7 (1) IN GENERAL.—Except as provided in para-
8 graph (2), the amendments made by this section
9 shall apply to exchanges after the date of the enact-
10 ment of this Act.

11 (2) TRANSITION RULE.—The amendments
12 made by this section shall not apply to any exchange
13 pursuant to a transaction which is—

14 (A) made pursuant to an agreement which
15 was binding on March 15, 2010, and at all
16 times thereafter;

17 (B) described in a ruling request submitted
18 to the Internal Revenue Service on or before
19 such date; or

20 (C) described on or before such date in a
21 public announcement or in a filing with the Se-
22 curities and Exchange Commission.

1 **TITLE III—PAYGO COMPLIANCE**

2 **SEC. 301. PAYGO COMPLIANCE.**

3 The budgetary effects of this Act, for the purpose of
4 complying with the Statutory Pay-As-You-Go Act of 2010,
5 shall be determined by reference to the latest statement
6 titled “Budgetary Effects of PAYGO Legislation” for this
7 Act, submitted for printing in the Congressional Record
8 by the Chairman of the House Budget Committee, pro-
9 vided that such statement has been submitted prior to the
10 vote on passage.

○