

Calendar No. 578

111TH CONGRESS
2^D SESSION**S. 3816**

To amend the Internal Revenue Code of 1986 to create American jobs
and to prevent the offshoring of such jobs overseas.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 2010

Mr. DURBIN (for himself, Mr. REID, Mr. SCHUMER, Mr. DORGAN, Mrs. BOXER, Mr. BROWN of Ohio, and Mr. LEAHY) introduced the following bill; which was read the first time

SEPTEMBER 22, 2010

Read the second time and placed on the calendar

A BILL

To amend the Internal Revenue Code of 1986 to create
American jobs and to prevent the offshoring of such
jobs overseas.

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 “Creating American
5 Jobs and Ending Offshoring Act”.

**TITLE I—INCENTIVES TO
CREATE AMERICAN JOBS**

**SEC. 101. PAYROLL TAX HOLIDAY FOR EMPLOYERS MOVING
JOBS TO THE UNITED STATES FROM OVER-
SEAS.**

(a) IN GENERAL.—Section 3111 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(e) SPECIAL EXEMPTION FOR CERTAIN INDIVIDUALS HIRED TO REPLACE EMPLOYEES WHOSE JOBS WERE OVERSEAS.—

“(1) IN GENERAL.—Subsection (a) shall not apply to wages paid by a qualified employer with respect to employment during the applicable 24-month period with respect to any qualified replacement individual for services performed—

“(A) in a trade or business of such qualified employer, or

“(B) in the case of a qualified employer exempt from tax under section 501(a), in furtherance of the activities related to the purpose or function constituting the basis of the employer’s exemption under section 501.

1 “(2) QUALIFIED EMPLOYER.—For purposes of
2 this subsection, the term ‘qualified employer’ has the
3 meaning given such term by subsection (d)(2).

4 “(3) QUALIFIED REPLACEMENT INDIVIDUAL.—
5 For purposes of this subsection—

6 “(A) IN GENERAL.—The term ‘qualified
7 replacement individual’ means any individual—

8 “(i) who begins employment with a
9 qualified employer after September 21,
10 2010, and before September 22, 2013,

11 “(ii) with respect to whom the quali-
12 fied employer certifies that such individual
13 has been employed by the qualified em-
14 ployer to replace another employee—

15 “(I) who was not a citizen or
16 lawfully present resident of the United
17 States, and

18 “(II) substantially all of whose
19 services for the employer were per-
20 formed outside of the United States,

21 “(iii) with respect to whom the quali-
22 fied employer certifies that substantially all
23 of the services the individual will perform
24 for the employer will be performed within
25 the United States, and

1 “(iv) who is not an individual de-
2 scribed in section 51(i)(1) (applied by sub-
3 stituting qualified employer for taxpayer
4 each place it appears).

5 For purposes of this paragraph, only 1 indi-
6 vidual may be treated as a qualified replace-
7 ment individual with respect to any employee
8 described in clause (ii) being replaced by the
9 qualified employer. Any certification under
10 clause (ii) or (iii) shall be made by signed affi-
11 davit, under penalties of perjury.

12 “(B) EMPLOYER.—All employers treated
13 as a single employer under subsection (a) or (b)
14 of section 52 shall be treated as a single em-
15 ployer for purposes of subparagraph (A)(ii), ex-
16 cept that section 1563(b)(2)(C) shall be dis-
17 regarded in applying section 1563 for purposes
18 of such section.

19 “(4) APPLICABLE 24-MONTH PERIOD.—For
20 purposes of this subsection, the term ‘applicable 24-
21 month period’ means, with respect to any qualified
22 replacement individual of a qualified employer, the
23 24-month period beginning on the hiring date of
24 such individual by the employer.

1 “(5) ELECTION.—A qualified employer may
2 elect to have this subsection not apply. Such election
3 shall be made in such manner as the Secretary may
4 require.

5 “(6) SPECIAL RULE FOR THIRD CALENDAR
6 QUARTER OF 2010.—

7 “(A) NONAPPLICATION OF EXEMPTION
8 DURING THIRD QUARTER.—Paragraph (1) shall
9 not apply with respect to wages paid during the
10 third calendar quarter of 2010.

11 “(B) CREDITING OF FIRST QUARTER EX-
12 EMPTION DURING FOURTH QUARTER.—The
13 amount by which the tax imposed under sub-
14 section (a) would (but for subparagraph (A))
15 have been reduced with respect to wages paid
16 by a qualified employer during the third cal-
17 endar quarter of 2010 shall be treated as a
18 payment against the tax imposed under sub-
19 section (a) with respect to the qualified em-
20 ployer for the fourth calendar quarter of 2010
21 which is made on the date that such tax is due.

22 “(7) REGULATIONS.—The Secretary shall pre-
23 scribe such regulations as may be necessary to carry
24 out the purposes of this subsection, including regula-
25 tions necessary to prevent the avoidance of such pur-

1 poses through the transfer and retransfer of employ-
 2 ees within and without the United States or other-
 3 wise.”.

4 (b) COORDINATION WITH WORK OPPORTUNITY
 5 CREDIT.—Section 51(c) of the Internal Revenue Code of
 6 1986 is amended by adding at the end the following new
 7 paragraph:

8 “(6) COORDINATION WITH PAYROLL TAX FOR-
 9 GIVENESS OF QUALIFIED REPLACEMENT INDIVID-
 10 UALS.—The term ‘wages’ shall not include any
 11 amount paid or incurred to a qualified replacement
 12 individual (as defined in section 3111(e)(3)) during
 13 the 2-year period beginning on the hiring date of
 14 such individual by an employer unless such employer
 15 makes an election not to have section 3111(e)
 16 apply.”.

17 (c) TRANSFERS TO FEDERAL OLD-AGE AND SUR-
 18 VIVORS INSURANCE TRUST FUND.—There are hereby ap-
 19 propriated to the Federal Old-Age and Survivors Trust
 20 Fund and the Federal Disability Insurance Trust Fund
 21 established under section 201 of the Social Security Act
 22 (42 U.S.C. 401) amounts equal to the reduction in reve-
 23 nues to the Treasury by reason of the amendments made
 24 by subsection (a). Amounts appropriated by the preceding
 25 sentence shall be transferred from the general fund at

1 such times and in such manner as to replicate to the ex-
 2 tent possible the transfers which would have occurred to
 3 such Trust Fund had such amendments not been enacted.

4 (d) EFFECTIVE DATE.—The amendments made by
 5 this section shall apply to wages paid after September 21,
 6 2010.

7 **TITLE II—DISINCENTIVES TO** 8 **MOVING AMERICAN JOBS** 9 **OVERSEAS**

10 **SEC. 201. DISALLOWANCE OF DEDUCTION, LOSS, OR CRED-** 11 **IT FOR CERTAIN ITEMS INCURRED IN MOV-** 12 **ING AMERICAN JOBS OFFSHORE.**

13 (a) IN GENERAL.—Part IX of subchapter B of chap-
 14 ter 1 of the Internal Revenue Code of 1986 is amended
 15 by adding at the end the following new section:

16 **“SEC. 280I. EXPENDITURES INCURRED IN MOVING AMER-** 17 **ICAN JOBS OFFSHORE.**

18 “(a) DISALLOWANCE.—No deduction, loss, or credit
 19 shall be allowed under this title for any taxable year for
 20 any disallowed amount.

21 “(b) DISALLOWED AMOUNT.—For purposes of this
 22 section—

23 “(1) IN GENERAL.—The term ‘disallowed
 24 amount’ means any amount which is paid or in-

1 curred during the taxable year which is properly al-
2 locable to an American jobs offshoring transaction.

3 “(2) LOSSES.—Such term shall include any loss
4 from any sale, exchange, abandonment, or other dis-
5 position of property in connection with an American
6 jobs offshoring transaction.

7 “(3) EXCEPTION FOR COSTS RELATED TO DIS-
8 PLACED WORKERS.—Such term shall not include any
9 amount paid or incurred for assistance to employees
10 within the United States whose jobs are being lost
11 as part of an American jobs offshoring transaction,
12 including any severance pay, outplacement services,
13 or employee retraining.

14 “(c) AMERICAN JOBS OFFSHORING TRANSACTION.—
15 For purposes of this section—

16 “(1) IN GENERAL.—The term ‘American jobs
17 offshoring transaction’ means any transaction (or se-
18 ries of transactions) in which the taxpayer reduces
19 or eliminates the operation of a trade or business (or
20 line of business) within the United States in connec-
21 tion with the start up or expansion of such trade or
22 business (or such line of business) by the taxpayer
23 outside of the United States.

24 “(2) EXCEPTION.—A transaction (or series of
25 transactions) shall not be treated as an American

1 jobs offshoring transaction if the taxpayer estab-
2 lishes to the satisfaction of the Secretary that such
3 transaction (or series of transactions) will not result
4 in the loss of employment for employees of the tax-
5 payer within the United States.

6 “(d) AGGREGATION RULE.—All employers treated as
7 a single employer under subsection (a) or (b) of section
8 52 shall be treated as a single taxpayer for purposes of
9 this section, except that section 1563(b)(2)(C) shall be
10 disregarded in applying section 1563 for purposes of sec-
11 tion 52.

12 “(e) REGULATIONS.—The Secretary shall prescribe
13 such regulations as may be necessary to carry out the pur-
14 poses of this section, including regulations necessary to
15 prevent the avoidance of such purposes and the application
16 of this section in the case of mergers, acquisitions, and
17 dispositions and in the case of contract employees.”.

18 (b) CONFORMING AMENDMENT.—The table of sec-
19 tions for part IX of subchapter B of chapter 1 of the In-
20 ternal Revenue Code of 1986 is amended by adding at the
21 end the following new item:

“Sec. 280I. Expenditures incurred in moving American jobs offshore.”.

22 (c) EFFECTIVE DATES.—

23 (1) IN GENERAL.—The amendments made by
24 this section shall apply to transactions occurring
25 after the date of the enactment of this Act.

1 (2) EXCEPTION FOR EXISTING TRANS-
 2 ACTIONS.—The amendments made by this section
 3 shall not apply to transactions occurring after the
 4 date of the enactment of this Act if the taxpayer es-
 5 tablishes to the satisfaction of the Secretary of the
 6 Treasury or the Secretary’s delegate that on or be-
 7 fore such date the taxpayer publicly identified the
 8 transaction in sufficient detail that the nature and
 9 scope of the transaction could be identified.

10 **SEC. 202. TAXATION OF INCOME OF CONTROLLED FOREIGN**
 11 **CORPORATIONS ATTRIBUTABLE TO IM-**
 12 **PORTED PROPERTY PRODUCED BY EMPLOY-**
 13 **EES IN AMERICAN JOBS MOVED OFFSHORE.**

14 (a) GENERAL RULE.—Subsection (a) of section 954
 15 of the Internal Revenue Code of 1986 (defining foreign
 16 base company income) is amended by striking the period
 17 at the end of paragraph (5) and inserting “, and”, by re-
 18 designating paragraph (5) as paragraph (4), and by add-
 19 ing at the end the following new paragraph:

20 “(5) imported property offshored income for the
 21 taxable year (determined under subsection (j) and
 22 reduced as provided in subsection (b)(5)).”.

23 (b) DEFINITION OF IMPORTED PROPERTY
 24 OFFSHORED INCOME.—Section 954 of the Internal Rev-

1 enue Code of 1986 is amended by adding at the end the
 2 following new subsection:

3 “(j) IMPORTED PROPERTY OFFSHORED INCOME.—

4 “(1) IN GENERAL.—For purposes of subsection
 5 (a)(5), the term ‘imported property offshored in-
 6 come’ means offshored income (whether in the form
 7 of profits, commissions, fees, or otherwise) received
 8 from a controlled foreign corporation and derived in
 9 connection with—

10 “(A) manufacturing, producing, growing,
 11 or extracting imported property;

12 “(B) the sale, exchange, or other disposi-
 13 tion of imported property; or

14 “(C) the lease, rental, or licensing of im-
 15 ported property.

16 Such term shall not include any foreign oil and gas
 17 extraction income (within the meaning of section
 18 907(c)) or any foreign oil related income (within the
 19 meaning of section 907(c)).

20 “(2) IMPORTED PROPERTY.—For purposes of
 21 this subsection—

22 “(A) IN GENERAL.—Except as otherwise
 23 provided in this paragraph, the term ‘imported
 24 property’ means property which is imported

1 into the United States by the offshored con-
2 trolled foreign corporation or a related person.

3 “(B) IMPORTED PROPERTY INCLUDES CER-
4 TAIN PROPERTY IMPORTED BY UNRELATED
5 PERSONS.—The term ‘imported property’ in-
6 cludes any property imported into the United
7 States by an unrelated person if, when such
8 property was sold to the unrelated person by
9 the controlled foreign corporation (or a related
10 person), it was reasonable to expect that—

11 “(i) such property would be imported
12 into the United States; or

13 “(ii) such property would be used as
14 a component in other property which would
15 be imported into the United States.

16 “(C) EXCEPTION FOR PROPERTY SUBSE-
17 QUENTLY EXPORTED.—The term ‘imported
18 property’ does not include any property which is
19 imported into the United States and which—

20 “(i) before substantial use in the
21 United States, is sold, leased, or rented by
22 the controlled foreign corporation or a re-
23 lated person for direct use, consumption,
24 or disposition outside the United States; or

1 “(ii) is used by the offshored con-
 2 trolled foreign corporation or a related per-
 3 son as a component in other property
 4 which is so sold, leased, or rented.

5 “(D) EXCEPTION FOR CERTAIN AGRICUL-
 6 TURAL COMMODITIES.—The term ‘imported
 7 property’ does not include any agricultural com-
 8 modity which is not grown in the United States
 9 in commercially marketable quantities.

10 “(3) OFFSHORED INCOME.—For purposes of
 11 this section, the term ‘offshored income’ means in-
 12 come described in paragraph (1) that is directly or
 13 indirectly derived from the operation of a trade or
 14 business (or line of business) which was started or
 15 expanded outside the United States as part of an
 16 American jobs offshoring transaction (as defined in
 17 section 280I(c)) to which the provisions of section
 18 280I apply.

19 “(4) DEFINITIONS AND SPECIAL RULES.—

20 “(A) IMPORT.—For purposes of this sub-
 21 section, the term ‘import’ means entering, or
 22 withdrawal from warehouse, for consumption or
 23 use. Such term includes any grant of the right
 24 to use intangible property (as defined in section
 25 936(h)(3)(B)) in the United States.

1 “(B) UNITED STATES.—For purposes of
 2 this subsection, the term ‘United States’ in-
 3 cludes the Commonwealth of Puerto Rico, the
 4 Virgin Islands of the United States, Guam,
 5 American Samoa, and the Commonwealth of
 6 the Northern Mariana Islands.

7 “(C) UNRELATED PERSON.—For purposes
 8 of this subsection, the term ‘unrelated person’
 9 means any person who is not a related person
 10 with respect to the controlled foreign corpora-
 11 tion.

12 “(D) COORDINATION WITH FOREIGN BASE
 13 COMPANY SALES INCOME.—For purposes of this
 14 section, the term ‘foreign base company sales
 15 income’ shall not include any imported property
 16 income.”.

17 (c) SEPARATE APPLICATION OF LIMITATIONS ON
 18 FOREIGN TAX CREDIT FOR IMPORTED PROPERTY
 19 OFFSHORED INCOME.—

20 (1) IN GENERAL.—Paragraph (1) of section
 21 904(d) of the Internal Revenue Code of 1986 (relat-
 22 ing to separate application of section with respect to
 23 certain categories of income) is amended by striking
 24 “and” at the end of subparagraph (A), by redesign-
 25 ating subparagraph (B) as subparagraph (C), and

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

3 “(B) imported property offshored income,
 4 and”.

5 (2) IMPORTED PROPERTY OFFSHORED INCOME
 6 DEFINED.—Paragraph (2) of section 904(d) of such
 7 Code is amended by redesignating subparagraphs
 8 (I), (J), and (K) as subparagraphs (J), (K), and
 9 (L), respectively, and by inserting after subpara-
 10 graph (H) the following new subparagraph:

11 “(I) IMPORTED PROPERTY OFFSHORED IN-
 12 COME.—The term ‘imported property offshored
 13 income’ means any income received or accrued
 14 by any person which is of a kind which would
 15 be imported property offshored income (as de-
 16 fined in section 954(j)).”.

17 (3) CONFORMING AMENDMENT.—Clause (ii) of
 18 section 904(d)(2)(A) of such Code is amended by in-
 19 serting “or imported property offshored income”
 20 after “passive category income”.

21 (d) TECHNICAL AMENDMENTS.—

22 (1) Clause (iii) of section 952(c)(1)(B) of the
 23 Internal Revenue Code of 1986 (relating to certain
 24 prior year deficits may be taken into account) is
 25 amended—

1 (A) by redesignating subclauses (II), (III),
 2 (IV), and (V) as subclauses (III), (IV), (V), and
 3 (VI), and

4 (B) by inserting after subclause (I) the fol-
 5 lowing new subclause:

6 “(II) imported property offshored
 7 income,”.

8 (2) The last sentence of paragraph (4) of sec-
 9 tion 954(b) of such Code (relating to exception for
 10 certain income subject to high foreign taxes) is
 11 amended by striking “subsection (a)(5)” and insert-
 12 ing “subsection (a)(4)”.

13 (3) Paragraph (5) of section 954(b) of such
 14 Code (relating to deductions to be taken into ac-
 15 count) is amended by striking “and the foreign base
 16 company oil related income” and inserting “the for-
 17 eign base company oil related income, and the im-
 18 ported property offshored income”.

19 (e) EFFECTIVE DATE.—The amendments made by
 20 this section shall apply to taxable years of foreign corpora-
 21 tions beginning after the date of the enactment of this
 22 Act, and to taxable years of United States shareholders
 23 within which or with which such taxable years of such for-
 24 eign corporations end.

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2^D Session

S. 3816

A BILL

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