II

112TH CONGRESS
2D SESSION

S. 3205

To amend the Internal Revenue Code of 1986 to provide that persons renouncing citizenship for a substantial tax avoidance purpose shall be subject to tax and withholding on capital gains, to provide that such persons shall not be admissible to the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 17, 2012

Mr. SCHUMER (for himself, Mr. CASEY, Mr. BLUMENTHAL, and Mr. HARKIN) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To amend the Internal Revenue Code of 1986 to provide that persons renouncing citizenship for a substantial tax avoidance purpose shall be subject to tax and withholding on capital gains, to provide that such persons shall not be admissible to the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Expatriation Prevention by Abolishing Tax-Related Incentives for Offshore Tenancy'' or the ''Ex-PATRIOT Act''.

SEC. 2. TAXATION OF CAPITAL GAINS OF NONRESIDENT ALIEN EXPATRIATES.

(a) IN GENERAL.—Paragraph (2) of section 871(a) of the Internal Revenue Code of 1986 is amended to read as follows:

''(2) CAPITAL GAINS.—

''(A) IN GENERAL.—In the case of—

''(i) a nonresident alien individual present in the United States for a period or periods aggregating 183 days or more during the taxable year, or

''(ii) a specified expatriate,

there is hereby imposed for such year a tax of 30 percent of the amount by which his gains, derived from sources within the United States, from the sale or exchange at any time during such year of capital assets exceed his losses, allocable to sources within the United States, from the sale or exchange at any time during such year of capital assets. For purposes of this paragraph, gains and losses shall be taken into account only if, and to the extent that, they would be recognized and taken into account if such gains and losses were effectively connected with the conduct of a trade or business within the United States, except that such gains and losses shall be determined without regard to section 1202 and such losses shall be determined without the benefits of the capital loss carryover provided in section 1212. Any gain or loss which is taken into account in determining the tax under paragraph (1) or subsection (b) shall not be taken into account in determining the tax under this paragraph. For purposes of this paragraph, a nonresident alien individual or specified expatriate not engaged in trade or business within the United States who has not established a taxable year for any prior period shall be treated as having a taxable year which is the calendar year.

"(B) COORDINATION WITH SECTION 877A.—For purposes of subparagraph (A), in determining the amount of any gain or loss on the sale or exchange of any asset which is held by a specified expatriate and which was subject to section 877A, the basis in such asset shall be considered to be the fair market value of such asset on the day before the expatriation date (as defined in section 877A(g)(3)).

"(C) SPECIFIED EXPATRIATE.—

"(i) IN GENERAL.—For purposes of subparagraph (A), the term 'specified expatriate' means, with respect to any taxable year, any covered expatriate (as defined in section 877A(g)(1)) whose expatriation date (as defined in section 877A(g)(3)) occurs after the date which is 10 years prior to the date of the enactment of this subparagraph.

"(ii) EXCEPTION.—An individual shall not be considered a specified expatriate if such individual establishes to the satisfaction of the Secretary that the loss of such individual's United States citizenship did not result in a substantial reduction in taxes.".

(b) WITHHOLDING.—Subsection (b) of section 1441 of the Internal Revenue Code of 1986 is amended by inserting "gains subject to tax under section 871(a)(2) by reason of subparagraph (A)(ii) thereof," after "section 871(a)(1)(D),".

(c) EFFECTIVE DATES.—

(1) TAXATION.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) WITHHOLDING.—The amendment made by subsection (b) shall apply to payments made after the date of the enactment of this Act.

SEC. 3. FORMER CITIZENS WHO RENOUNCED CITIZENSHIP TO AVOID TAXATION.

(a) INADMISSIBILITY OF FORMER CITIZENS.—Section 212(a)(10)(E) of the Immigration and Nationality Act (8 U.S.C. 212(a)(10)(E)) is amended to read as follows:

"(E) FORMER CITIZENS WHO RENOUNCED CITIZENSHIP TO AVOID TAXATION.—

"(i) IN GENERAL.—Any alien who is determined by the Secretary of the Treasury to be a specified expatriate is inadmissible.

"(ii) SPECIFIED EXPATRIATE.—In this subparagraph, the term 'specified expatriate' has the meaning given that term in section 871(a)(2)(C) of the Internal Revenue Code of 1986.

"(iii) NOTIFICATION OF EXCEPTED INDIVIDUALS.—The Secretary of the

Treasury shall notify the Secretary of State and the Secretary of Homeland Security of the name of each individual who the Secretary of the Treasury has determined is not a specified expatriate under section 871(a)(2)(C)(ii) of the Internal Revenue Code of 1986.''.

(b) PROHIBITION ON WAIVER OF INADMISSIBILITY.—

(1) IN GENERAL.—Section 212(d)(3) of the Immigration and Nationality Act (8 U.S.C. 212(d)(3)) is amended—

(A) by striking ''Attorney General'' each place that term appears and inserting ''Secretary of Homeland Security''; and

(B) in subparagraph (A)—

(i) in clause (i), by striking ''and clauses (i) and (ii) of paragraph (3)(E)'' and inserting ''(3)(E)(i), (3)(E)(ii), or (10)(E)''; and

(ii) in clause (ii), by striking ''and clauses (i) and (ii) of paragraph (3)(E)'' and inserting ''(3)(E)(i), (3)(E)(ii), or (10)(E)''.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury, or the Secretary's delegate, shall submit to Congress a report with recommendations (made in consultation with the Secretary of State and the Secretary of Homeland Security) for implementing a policy under which an individual who is a specified expatriate (as defined in section 871(a)(2)(C) of the Internal Revenue Code of 1986) may be granted a waiver of inadmissibility under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) if such individual satisfies requirements relating to such individual's tax status, such as a tax or penalty equal to the loss in tax revenue to the United States resulting from such individual's loss of United States citizenship.

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