I

114TH CONGRESS
2D SESSION

H. R. 5158

To amend the Internal Revenue Code of 1986 to provide a conditional 10 percent rate of tax for certain businesses.

IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 2016

Mr. MCKINLEY introduced the following bill; which was referred to the Committee on Ways and Means

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A BILL

To amend the Internal Revenue Code of 1986 to provide a conditional 10 percent rate of tax for certain businesses.

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 ''Make America Competitive Act of 2016''.

SEC. 2. ELECTED 10-PERCENT RATE.

(a) IN GENERAL.—

(1) CORPORATE RATE.—Section 11(b) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(3) MAKING AMERICA COMPETITIVE AGAIN RATE.—Notwithstanding paragraphs (1) and (2), the amount of the tax imposed by subsection (a) on the taxable income of a corporation which has in effect for the taxable year an election under section 5 of the Make America Competitive Again Act shall be determined at a rate of 10 percent.".

(2) INDIVIDUAL RATE.—Section 1 of such Code is amended by adding at the end the following new subsection:

"(j) MAKING AMERICA COMPETITIVE AGAIN RATE.—

"(1) IN GENERAL.—If a taxpayer has qualified business income for any taxable year, the tax imposed by this section for such taxable year shall not exceed the sum of—

"(A) a tax computed at the rates and in the same manner as if this subsection had not been enacted on taxable income reduced by the portion of such taxable income that is attributable to qualified business income, plus

"(B) 10 percent of the portion of taxable income that is attributable qualified business income.

"(2) QUALIFIED BUSINESS INCOME.—For purposes of this section, the term 'qualified business income' means income of the individual that is derived from a partnership, S corporation, or sole proprietorship which has in effect for the taxable year an election under section 5 of the Make America Competitive Again Act.

"(3) PORTION OF TAXABLE INCOME ATTRIBUTABLE.—For purposes of this subsection, the portion of taxable income that is attributable to qualified business income shall be an amount that bears the same ratio to taxable income as—

"(A) qualified business income (reduced by any deductions properly allocable thereto), bears to

"(B) gross income (reduced by deductions properly allocable thereto).

For purposes of the preceding sentence, the Secretary shall by regulation prescribe methods for the proper allocation of deductions.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2015.

SEC. 3. ELECTED REPATRIATION OF FOREIGN EARNINGS IN UNITED STATES.

(a) IN GENERAL.—Section 965(a)(1) of the Internal Revenue Code of 1986 is amended by inserting ", which has in effect for the taxable year an election under section 5 of the Make America Competitive Again Act,'' after ''which is a United States shareholder''.

(b) REPATRIATION SUBJECT TO 5-PERCENT TAX RATE.—Section 965(a)(1) of such Code is amended by striking ''85 percent'' and inserting ''85.7 percent''.

(c) PERMANENT EXTENSION TO ELECT REPATRIATION.—Section 965(f) of such Code is amended to read as follows:

''(f) ELECTION.—The taxpayer may elect to apply this section to any taxable year only if made on or before the due date (including extensions) for filing the return of tax for such taxable year.''.

(d) REPATRIATION INCLUDES CURRENT AND ACCUMULATED FOREIGN EARNINGS.—Section 965(b)(1) of such Code is amended to read as follows:

''(1) IN GENERAL.—The amount of dividends taken into account under subsection (a) shall not exceed the sum of the current and accumulated earnings and profits described in section 959(c)(3) for the year a deduction is claimed under subsection (a), without diminution by reason of any distributions made during the election year, for all controlled foreign corporations of the United States shareholder.''.

(e) CONFORMING AMENDMENTS.—

(1) Section 965(b) of such Code is amended by striking paragraphs (2) and (4) and by redesignating paragraph (3) as paragraph (2).

(2) Section 965(c) of such Code is amended by striking paragraphs (1) and (2) and by redesignating paragraphs (3), (4), and (5) as paragraphs (1), (2), and (3), respectively.

(3) Section 965(c)(3) of such Code, as redesignated by subparagraph (B), is amended to read as follows:

"(3) CONTROLLED GROUPS.—All United States shareholders which are members of an affiliated group filing a consolidated return under section 1501 shall be treated as one United States shareholder.".

(4) The heading for section 965 of such Code is amended by striking "**TEMPORARY**".

(5) The table of sections for subpart F of part III of subchapter N of chapter 1 of such Code is amended by striking "Temporary dividends" and inserting "Dividends".

(f) TRANSFERS TO HIGHWAY TRUST FUND.—Section 9503(f) of such Code is amended by redesignating paragraph (10) as paragraph (11) and by inserting after paragraph (9) the following new paragraph:

"(10) TRANSFER OF REVENUES FROM REPATRIATION HOLIDAY.—There is hereby appropriated to the Highway Account (as defined in subsection (e)(5)(B)) in the Highway Trust Fund such amounts as the Secretary from time to time estimates are equal to the amount of revenue received in the Treasury after the date of the enactment of this paragraph from income taxes imposed on dividends which are taken into account under section 965.".

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2015.

SEC. 4. ELECTED WAIVER OF CERTAIN TAX EXPENDITURES.

(a) DOMESTIC PRODUCTIONS ACTIVITIES DEDUCTION.—

(1) IN GENERAL.—Section 199 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

"(e) WAIVER IN CASE OF MAKE AMERICA COMPETITIVE AGAIN ELECTION.—Subsection (a) shall not apply to a taxpayer for any taxable year for which such taxpayer has in effect an election under section 5 of the Make America Competitive Again Act.".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to taxable years beginning after December 31, 2015.

(b) LIKE-KIND EXCHANGES.—

(1) IN GENERAL.—Section 1031 of such Code is amended by adding at the end the following new subsection:

"(j) WAIVER IN CASE OF MAKE AMERICA COMPETITIVE AGAIN ELECTION.—Subsection (a) shall not apply to any exchange during any taxable year for which the taxpayer has in effect an election under section 5 of the Make America Competitive Again Act.".

(2) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2015.

(c) INSTALLMENT SALES.—

(1) IN GENERAL.—Section 453 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

"(m) WAIVER IN CASE OF MAKE AMERICA COMPETITIVE AGAIN ELECTION.—

"(1) IN GENERAL.—Subsection (a) shall not apply with respect to any taxable year for which the taxpayer has in effect an election under section 5 of the Make America Competitive Again Act.

"(2) PRIOR DISPOSITIONS.—If the taxpayer makes an election under such section 5 for a taxable year for which income from a disposition of property in a prior taxable year would (but for this subsection) be taken into account under the installment method, the remaining unrecognized income from such disposition shall be recognized by the taxpayer in the year of such election.".

(2) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2015.

SEC. 5. MAKE AMERICA COMPETITIVE AGAIN ELECTION.

(a) IN GENERAL.—An eligible employer shall be treated as having in effect an election under this section for a taxable year if such employer elects the application of this section (at such time and in such form and manner as the Secretary of the Treasury shall by regulation prescribe) and meets the requirements of paragraphs (1) through (4) of subsection (b).

(b) REQUIREMENTS FOR ELECTION.—

(1) HEALTH INSURANCE.—

(A) IN GENERAL.—The requirements of this paragraph shall be treated as met for a taxable year if the employer offers to each full-time employee (and any dependents) the opportunity to enroll in a group health plan or group health insurance coverage for all months ending during the taxable year, unless the required contribution (as defined in section 5000A(e)(1)(B) of the Internal Revenue Code of 1986) of any such employee with respect to such plan exceeds 9.5 percent of the taxpayer's modified adjusted gross income.

(B) MODIFIED ADJUSTED GROSS INCOME.—The term "modified adjusted gross income" means adjusted gross income increased by—

(i) any amount excluded from gross income under section 911,

(ii) any amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax, and

(iii) an amount equal to the portion of the taxpayer's social security benefits (as defined in section 86(d) of such Code) which is not included in gross income under section 86 for the taxable year.

(2) DEFINED CONTRIBUTION PLAN.—

(A) IN GENERAL.—The requirements of this paragraph shall be treated as met for a taxable year if the employer offers to all its full-time employees a defined contribution plan (within the meaning of section 414(i) of the Internal Revenue Code of 1986) under which the employer makes matching contributions on behalf of each employee in an amount not less that 50 percent of so much of elective contributions of the employee as do not exceed 6 percent of compensation.

(B) AGE AND SERVICE EXCEPTION.—In the case of an employer that maintains a qualified plan or arrangement which excludes employees who have not satisfied the minimum age and service requirements for participation in the plan, such employee who has not satisfied such requirements.

(3) PAY INCREASES.—

(A) IN GENERAL.—The requirements of this paragraph shall be treated as met if the average increase in wages paid by the employer to each applicable employee for the calendar year ending with or within the taxable year, compared with wages paid by the employer to each such applicable employee for the preceding calendar year, is at least 3 percent.

(B) APPLICABLE EMPLOYEE.—For purposes of this paragraph, the term ''applicable employee'' means, with respect to any employer, a full-time employee who is not in the group consisting of the top 10 percent of employees when ranked on the basis of compensation paid during such year.

(C) WAGES.—For purposes of this paragraph, the term ''wages'' shall have the meaning given such term by section 3121 of the Internal Revenue Code of 1986 (determined without regard to any dollar limitation contained in such section).

(D) SPECIAL RULES.—

(i) COMMISSIONED EMPLOYEES.—In the case of any employee who is paid solely on a commission basis, the employer shall be treated as meeting the requirements of subparagraph (A) only if the employer pays the employee (on a noncommission basis) an amount equal to 3 percent of such employees wages for the preceding calendar year.

(ii) NEW EMPLOYEES.—An employer shall not be treated as meeting the requirements of subparagraph (A) with respect to any employee who was not employed by the employer during the preceding calendar year unless the employee's increase in wages paid by the employer for the calendar year is at least $2,500.

(iii) COST-OF-LIVING ADJUSTMENT.—In the case of calendar years beginning after December 31, 2017, the $2,500 amount under clause (ii) shall be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting "calendar year 2016" for "calendar year 1992" in subparagraph (B) thereof.

(4) DEFINED BENEFIT PLAN; ADDITIONAL SOCIAL SECURITY CONTRIBUTIONS.—

(A) IN GENERAL.—The requirements of this paragraph shall be treated as met for a taxable year if, on behalf of each full-time employee to whom the employer does not offer a defined benefit plan (within the meaning of section 414(j) of the Internal Revenue Code of 1986), the employer makes contributions to the Secretary of the Treasury in an amount equal to 4.5 percent of the wages (as defined in section 3121(a) of such Code) paid by the employer with respect to employment (as defined in section 3121(b) of such Code) during the calendar year. Such contributions shall be made at the same time and in the same manner as the tax imposed on the employer under section 3111 of such Code.

(B) SPECIAL RULE FOR HIGHLY COMPENSATED EMPLOYEES.—In the case of an employee whose wages (as defined in section 3121(a) of such Code, determined without regard to any dollar limitation contained in such section) paid by the employer with respect to employment (as defined in section 3121(b) of such Code) exceed $500,000 for the calendar year, the employer shall make contributions to the Secretary of the Treasury in an amount equal to 4.5 percent of such excess, of which—

(i) 2.5 percent of such excess shall be treated for purposes of section 6 of this

Act as a contribution made under subparagraph (A), and

(ii) 2.0 percent of such excess shall be transferred to the Federal Old-Age and Survivors Insurance Trust Fund without any corresponding increase in the primary insurance amount of such individual.

(C) INDEPENDENT CONTRACTORS.—In the case of an individual who receives remuneration from another person for services provided, other than as an employee, on more than 130 days during the calendar year, for purposes of subparagraph (A), for such calendar year such other person shall treat such individual as an employee and such remuneration shall be treated as wages paid with respect to employment.

(c) DEFINITIONS AND SPECIAL RULE.—For purposes of this section—

(1) ELIGIBLE EMPLOYER.—The term ''eligible employer'' means, with respect to any taxable year, an employer which has at least 5 full-time employees for the taxable year.

(2) FULL-TIME EMPLOYEE.—The term ''full-time employee'' means, with respect to any month,

an employee who is employed on average at least 30 hours of service per week.

(3) UNITED STATES EMPLOYEES ONLY.—Subsection (b) shall be applied without regard to any employees whose essential job function is outside the United States.

(4) CONTROLLED GROUPS.—All employees who are treated as employed by a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as employed by a single employer.

(5) COLLECTIVE BARGAINING EMPLOYEES EXCLUDED.—The employer may exclude from the requirements and determinations made under this section employees subject to a collective bargaining agreement.

SEC. 6. ADDITIONAL SOCIAL SECURITY ACCOUNT FUND.

(a) IN GENERAL.—There is established in the Treasury of the United States a fund to be known as the ‘‘Additional Social Security Account Fund’’.

(b) AMOUNTS HELD BY FUND.—Such Fund shall consist of amounts equivalent to the sum of all amounts paid under section 5(b)(4)(A) of the Make America Competitive Again Act (and any net investment earnings attributable thereto), less any transfer under subsection (c) or any distribution permitted under this section.

(c) TRANSFER OF ELECTED AMOUNTS TO TRUST FUND.—The Secretary of the Treasury shall transfer from such Fund to the Federal Old-Age and Survivors Insurance Trust Fund any amounts paid under section 5(b)(4)(A) with respect to which the individual on whose behalf such amount were paid has elected to be so transferred and treated under section 215(j) of the Social Security Act (42 U.S.C. 415(j)), as added by this Act. Any such election shall be made at such time and in such form and manner as the Secretary shall prescribe and shall be irrevocable.

(d) MANAGEMENT OF FUND AND ACCOUNTS.—

(1) IN GENERAL.—The Secretary shall establish an Additional Social Security Account program, under which—

(A) amounts in the Fund (and earnings attributable thereto) shall be separately accounted for and held for the exclusive benefit of each individual on whose behalf such amounts were contributed, and

(B) distributions may be made by such individuals under rules prescribed by the Secretary similar to the rules applicable to a qualified cash or deferred arrangements (within the meaning of section 401(k) of the Internal Revenue Code of 1986).

(e) TAX TREATMENT OF FUND.—

(1) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, the Additional Social Security Account Fund shall be treated as a trust described in section 401(a) of such Code which is exempt from taxation under section 501(a) of such Code, and any distribution from the Fund under the Additional Social Security Account program shall be treated in the same manner as a distribution from such a trust.

(2) NO DISTRIBUTIONS DURING FIRST 10 YEARS OF FUND.—No distributions may be made from the Fund earlier than 10 years after the date of the enactment of this Act.

(3) ROLLOVERS PROHIBITED.—An eligible rollover distribution (as defined in section 402(c)(4) of such Code) shall not include any amount distributed from the Additional Social Security Account.

(f) INVESTMENT OF FUND.—The Secretary shall appoint a Board, which shall provide for the investment of amounts which are held on behalf of individuals in the Additional Social Security Account Fund. The Board shall provide by regulation for the prudent direction of investments of such amounts by such individuals in conservative and age appropriate options.

(g) TRANSFER AT DEATH.—Individuals may designate one or more beneficiaries (under such rules as the Secretary shall prescribe) to provide for disposition at death of any remaining amounts in the Fund held on such individual's behalf.

SEC. 7. INCREASE OF PRIMARY INSURANCE AMOUNT AS A RESULT OF CERTAIN EMPLOYER CONTRIBUTIONS.

Section 215 of the Social Security Act (42 U.S.C. 415) is amended by adding at the end the following:

"(j)(1) In the case of an individual on whose behalf of contributions have been made under section 5(b)(4)(A) of the Make America Competitive Act of 2016, and who has made an election under section 6(c) of such Act with respect to such contributions, the primary insurance amount of such individual otherwise determined under this section (without regard to this subsection) shall be computed or recomputed, for months beginning after each such contribution, by increasing such primary insurance amount as specified under paragraph (2).

"(2) The increase specified under this paragraph shall be determined under regulations issued by the Commissioner of Social Security.".

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