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103D CONGRESS
1ST SESSION

H. R. 1158

To provide for the affordability of prescription drug prices by reducing certain nonresearch related tax credits to pharmaceutical manufacturers and to generate previously uncollected tax revenues for the Federal Government.

IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 1993

Mr. MACHTLEY (for himself and Mr. MURTHA) introduced the following bill; which was referred jointly to the Committees on Ways and Means and Energy and Commerce

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A BILL

To provide for the affordability of prescription drug prices by reducing certain nonresearch related tax credits to pharmaceutical manufacturers and to generate previously uncollected tax revenues for the Federal Government.

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 ''Prescription Drug Affordability Act of 1993''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) although prescription drugs represent one of the most frequently used medical care interventions in treating common acute and chronic diseases, many Americans, especially elderly and other vulnerable populations, are unable to afford their medications because of excessive and persistent prescription drug price inflation;

(2) between 1980 and 1990, prescription drug price inflation was 3 times the rate of general inflation;

(3) between 1985 and 1991, the prices of the 20 top selling prescription drugs, which account for almost a third of prescription sales, rose 79 percent—nearly 4 times the general rate of inflation;

(4) prescription drug manufacturers continue to make enormous profits on the backs of the elderly, poor, and other vulnerable populations that are unable to afford their medications;

(5) because of the limited availability of private or public prescription drug coverage for the elderly, prescription drugs represent the highest out-of-pocket medical care cost for 3 of 4 elderly patients, surpassed only by costs of long-term care services;

(6) individuals over 65 fill an average of 15 prescriptions a year to treat chronic health condi-

tions compared to 5 prescriptions for those under 65;

(7) the Federal Government and American taxpayer provide substantial subsidies to the pharmaceutical industry in the form of tax incentives, tax write-offs, and grants for non-research activities;

(8) for example, in 1987 alone, the pharmaceutical industry received a section 936 tax credit of more than $1,400,000,000, and such credit is estimated to have yielded over $2,000,000,000 in tax breaks in 1990 to such industry;

(9) when Congress enacted section 936 in 1976, it sought to help Puerto Rico obtain employment-producing investments, however, in 1987 the pharmaceutical industry received over half of the tax benefits provided by section 936 but employed less than 20 percent of the workers;

(10) the Department of the Treasury will lose $15,000,000,000 in tax revenues during the 1993 through 1997 period due to section 936; and

(11) 17 of the 21 most prescribed drugs in the United States in 1990 are authorized for Puerto Rican manufacture.

(b) PURPOSES.—The purposes of this Act are to insure that the elderly, the chronically ill, and all Americans have access to reasonably-priced pharmaceutical products.

SEC. 3. REDUCTION IN POSSESSIONS TAX CREDIT FOR EXCESSIVE PHARMACEUTICAL INFLATION.

(a) IN GENERAL.—Section 936 of the Internal Revenue Code of 1986 (relating to Puerto Rico and possession tax credit) is amended by adding at the end the following new subsection:

''(i) REDUCTION FOR EXCESSIVE PHARMACEUTICAL INFLATION.—

''(1) IN GENERAL.—In the case of any manufacturer of single source drugs or innovator multiple source drugs, the amount by which the credit under this section for the taxable year (determined without regard to this subsection) exceeds the manufacturer's wage base for such taxable year shall be reduced by the product of—

''(A) the amount of such excess, multiplied by

''(B) the sum of the reduction percentages for each single source drug or innovator multiple source drug of the manufacturer for such taxable year.

''(2) MANUFACTURER'S WAGE BASE.—For purposes of this subsection—

''(A) IN GENERAL.—The manufacturer's wage base for any taxable year is equal to the total amount of wages paid during such taxable year by the manufacturer to eligible employees in Puerto Rico with respect to the manufacture of single source drugs and innovator multiple source drugs.

''(B) ELIGIBLE EMPLOYEES.—The term 'eligible employee' means any employee of the manufacturer (as defined in section 3121(d)) who is a bona fide resident of Puerto Rico and subject to tax by Puerto Rico on income from sources within and without Puerto Rico during the entire taxable year.

''(C) WAGES.—The term 'wages' has the meaning given such term by section 3121(a).

''(3) REDUCTION PERCENTAGE.—For purposes of this subsection—

''(A) IN GENERAL.—The reduction percentage for any drug for any taxable year is the percentage determined by multiplying—

''(i) the sales percentage for such drug for such taxable year, by

''(ii) the price increase percentage for such drug for such taxable year.

''(B) SALES PERCENTAGE.—The sales percentage for any drug for any taxable year is the percentage determined by dividing—

''(i) the total sales of such drug by the manufacturer for such taxable year, by

''(ii) the total sales of all single source drugs and innovator multiple source drugs by the manufacturer for such taxable year.

''(C) PRICE INCREASE PERCENTAGE.—The price increase percentage for any drug for any taxable year is the percentage determined by multiplying—

''(i) 20, times

''(ii) the excess (if any) of—

''(I) the percentage increase in the average manufacturer's price for such drug for the taxable year over such average price for the base taxable year, over

''(II) the percentage increase in the Consumer Price Index (as defined in section 1(g)(5)) for the taxable year over the base taxable year.

''(D) TOTAL SALES.—

''(i) DOMESTIC SALES ONLY.—Total sales shall only include sales for use or consumption in the United States.

''(ii) SALES TO RELATED PARTIES NOT INCLUDED.—Total sales shall not include sales to any related party (as defined in section 267(b)).

''(E) AVERAGE MANUFACTURER'S PRICE.—The term 'average manufacturer's price' for any taxable year means the average price paid to the manufacturer by wholesalers or direct buyers and purchasers for each single source drug or innovator multiple source drug sold to the various classes of purchasers.

''(F) BASE TAXABLE YEAR.—The base taxable year for any single source drug or innovator multiple source drug is the later of—

''(i) the last taxable year ending in 1991, or

''(ii) the first taxable year beginning after the date on which the marketing of such drug begins.

''(4) OTHER DEFINITIONS.—For purposes of this subsection—

''(A) MANUFACTURER.—

''(i) IN GENERAL.—The term 'manufacturer' means any person which is engaged in—

''(I) the production, preparation, propagation, compounding, conversion, or processing of prescription drug products, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or

''(II) in the packaging, repackaging, labeling, relabeling, or distribution of prescription drug products.

Such term does not include a wholesale distributor of drugs or a retail pharmacy licensed under State law.

''(ii) CONTROLLED GROUPS.—For purposes of clause (i)—

''(I) CONTROLLED GROUP OF CORPORATIONS.—All corporations which are members of the same controlled group of corporations shall be

treated as 1 person. For purposes of the preceding sentence, the term 'controlled group of corporations' has the meaning given to such term by section 1563(a), except that 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)(1), and the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

''(II) PARTNERSHIPS, PROPRIETORSHIPS, ETC., WHICH ARE UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, all trades or business (whether or not incorporated) which are under common control shall be treated as 1 person. The regulations prescribed under this subclause shall be based on principles similar to the principles which apply in the case of subclause (I).

''(B) SINGLE SOURCE DRUG.—The term 'single source drug' means a drug or biological which is produced or distributed under an origi-

nal new drug application or product licensing application, including a drug product or biological marketed by any cross-licensed producers or distributors operating under the new drug application or product licensing application.

''(C) INNOVATOR MULTIPLE SOURCE DRUG.—The term 'innovator multiple source drug' means a multiple source drug (within the meaning of section 1927(k)(7)(A)(i) of the Social Security Act) that was originally marketed under an original new drug application or a product licensing application approved by the Food and Drug Administration.

''(5) SPECIAL RULES.—For purposes of this subsection—

''(A) DOSAGE TREATMENT.—Except as provided by the Secretary, each dosage form and strength of a single source drug or innovator multiple source drug shall be treated as a separate drug.

''(B) ROUNDING OF PERCENTAGES.—Any percentage shall be rounded to the nearest hundredth of a percent.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1993.

SEC. 4. ALLOCATION OF ADDITIONAL REVENUES.

The additional revenues received in the Treasury during any fiscal year by reason of the provisions of section 936(i) of the Internal Revenue Code of 1986 (as added by section 3 of this Act) are hereby allocated for accounting purposes to a separate account in the Treasury to be used as follows:

(1) 75 percent of such additional revenues shall be used for deficit reduction purposes.

(2) 25 percent of such additional revenues shall be used for purposes of developing State prescription drug assistance programs (or supplementing existing State prescription drug assistance programs) for those States with the highest percentage of elderly or poor populations (as determined by the Bureau of the Census).

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