

104TH CONGRESS  
2D SESSION

# H. R. 4122

To rescind restrictions on welfare and public benefits for legal immigrants enacted by title 4 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, to reduce corporate welfare, to strengthen tax provisions regarding persons who relinquish United States citizenship, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 19, 1996

Mr. GUTIERREZ (for himself, Mr. EVANS, Mrs. MEEK of Florida, Mr. FILNER, Mr. DELLUMS, Mr. ABERCROMBIE, Ms. NORTON, Mr. SERRANO, Mr. CONYERS, Mr. FRANK of Massachusetts, Mr. HILLIARD, Ms. WATERS, Mr. STARK, Mr. TORRES, Mr. GONZALEZ, Mr. PASTOR, Mr. PAYNE of New Jersey, and Ms. ROYBAL-ALLARD) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To rescind restrictions on welfare and public benefits for legal immigrants enacted by title 4 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, to reduce corporate welfare, to strengthen tax provisions regarding persons who relinquish United States citizenship, 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.**

2 This Act may be cited as the “Immigrant Fairness  
3 Act of 1996”.

4 **TITLE I—TERMINATION OF PRO-**  
5 **VISIONS OF PUBLIC LAW 104–**  
6 **193 RESTRICTING WELFARE**  
7 **AND PUBLIC BENEFITS FOR**  
8 **LEGAL IMMIGRANTS**

9 **SEC 101. TERMINATION OF PROVISIONS OF PUBLIC LAW**  
10 **104–193 RESTRICTING WELFARE AND PUBLIC**  
11 **BENEFITS FOR LEGAL IMMIGRANTS.**

12 Notwithstanding any other provision of law, on the  
13 date of the enactment of this Act, the provisions of title  
14 4 of the Personal Responsibility and Work Opportunity  
15 Reconciliation Act of 1996 (Public Law 104–193) shall  
16 cease to be effective, the amendments made by that title  
17 shall be repealed, and any provision of law repealed by  
18 that title shall be reenacted.

19 **TITLE II—TAX PROVISIONS**

20 **SECTION 201. REVISION OF TAX RULES ON EXPATRIATION.**

21 (a) **IN GENERAL.**—Subpart A of part II of sub-  
22 chapter N of chapter 1 of the Internal Revenue Code of  
23 1986 is amended by inserting after section 877 the follow-  
24 ing new section:

1 **“SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.**

2 “(a) GENERAL RULES.—For purposes of this sub-  
3 title—

4 “(1) MARK TO MARKET.—Except as provided in  
5 subsection (f)(2), all property held by an expatriate  
6 immediately before the expatriation date shall be  
7 treated as sold at such time for its fair market  
8 value.

9 “(2) RECOGNITION OF GAIN OR LOSS.—In the  
10 case of any sale under paragraph (1)—

11 “(A) notwithstanding any other provision  
12 of this title, any gain arising from such sale  
13 shall be taken into account for the taxable year  
14 of the sale unless such gain is excluded from  
15 gross income under part III of subchapter B,  
16 and

17 “(B) any loss arising from such sale shall  
18 be taken into account for the taxable year of  
19 the sale to the extent otherwise provided by this  
20 title, except that section 1091 shall not apply  
21 (and section 1092 shall apply) to any such loss.

22 “(3) ELECTION TO CONTINUE TO BE TAXED AS  
23 UNITED STATES CITIZEN.—

24 “(A) IN GENERAL.—If an expatriate elects  
25 the application of this paragraph with respect  
26 to any property—

1           “(i) this section (other than this para-  
2           graph) shall not apply to such property,  
3           but

4           “(ii) such property shall be subject to  
5           tax under this title in the same manner as  
6           if the individual were a United States  
7           citizen.

8           “(B) LIMITATION ON AMOUNT OF ESTATE,  
9           GIFT, AND GENERATION-SKIPPING TRANSFER  
10          TAXES.—The aggregate amount of taxes im-  
11          posed under subtitle B with respect to any  
12          transfer of property by reason of an election  
13          under subparagraph (A) shall not exceed the  
14          amount of income tax which would be due if the  
15          property were sold for its fair market value im-  
16          mediately before the time of the transfer or  
17          death (taking into account the rules of para-  
18          graph (2)).

19          “(C) REQUIREMENTS.—Subparagraph (A)  
20          shall not apply to an individual unless the indi-  
21          vidual—

22                 “(i) provides security for payment of  
23                 tax in such form and manner, and in such  
24                 amount, as the Secretary may require,

1           “(ii) consents to the waiver of any  
2           right of the individual under any treaty of  
3           the United States which would preclude as-  
4           sessment or collection of any tax which  
5           may be imposed by reason of this para-  
6           graph, and

7           “(iii) complies with such other re-  
8           quirements as the Secretary may prescribe.

9           “(D) ELECTION.—An election under sub-  
10          paragraph (A) shall apply only to the property  
11          described in the election and, once made, shall  
12          be irrevocable.

13          “(b) EXCLUSION FOR CERTAIN GAIN.—The amount  
14          which would (but for this subsection) be includible in the  
15          gross income of any individual by reason of subsection (a)  
16          shall be reduced (but not below zero) by \$600,000.

17          “(c) PROPERTY TREATED AS HELD.—For purposes  
18          of this section, except as otherwise provided by the Sec-  
19          retary, an individual shall be treated as holding—

20                 “(1) all property which would be includible in  
21                 his gross estate under chapter 11 if such individual  
22                 were a citizen or resident of the United States (with-  
23                 in the meaning of chapter 11) who died at the time  
24                 the property is treated as sold,

1           “(2) any other interest in a trust which the in-  
2           dividual is treated as holding under the rules of sub-  
3           section (f)(1), and

4           “(3) any other interest in property specified by  
5           the Secretary as necessary or appropriate to carry  
6           out the purposes of this section.

7           “(d) EXCEPTIONS.—The following property shall not  
8           be treated as sold for purposes of this section:

9           “(1) UNITED STATES REAL PROPERTY INTER-  
10          ESTS.—Any United States real property interest (as  
11          defined in section 897(c)(1)), other than stock of a  
12          United States real property holding corporation  
13          which does not, on the expatriation date, meet the  
14          requirements of section 897(c)(2).

15          “(2) INTEREST IN CERTAIN RETIREMENT  
16          PLANS.—

17                 “(A) IN GENERAL.—Any interest in a  
18                 qualified retirement plan (as defined in section  
19                 4974(c)), other than any interest attributable to  
20                 contributions which are in excess of any limita-  
21                 tion or which violate any condition for tax-  
22                 favored treatment.

23                 “(B) FOREIGN PENSION PLANS.—

24                         “(i) IN GENERAL.—Under regulations  
25                         prescribed by the Secretary, interests in

1 foreign pension plans or similar retirement  
2 arrangements or programs.

3 “(ii) LIMITATION.—The value of prop-  
4 erty which is treated as not sold by reason  
5 of this subparagraph shall not exceed  
6 \$500,000.

7 “(e) DEFINITIONS.—For purposes of this section—

8 “(1) EXPATRIATE.—The term ‘expatriate’  
9 means—

10 “(A) any United States citizen who relin-  
11 quishes his citizenship, or

12 “(B) any long-term resident of the United  
13 States who—

14 “(i) ceases to be a lawful permanent  
15 resident of the United States (within the  
16 meaning of section 7701(b)(6)), or

17 “(ii) commences to be treated as a  
18 resident of a foreign country under the  
19 provisions of a tax treaty between the  
20 United States and the foreign country and  
21 who does not waive the benefits of such  
22 treaty applicable to residents of the foreign  
23 country.

24 An individual shall not be treated as an expatriate  
25 for purposes of this section by reason of the individ-

1 ual relinquishing United States citizenship before at-  
2 taining the age of 18½ if the individual has been a  
3 resident of the United States (as defined in section  
4 7701(b)(1)(A)(ii)) for less than 5 taxable years be-  
5 fore the date of relinquishment.

6 “(2) EXPATRIATION DATE.—The term ‘expa-  
7 triation date’ means—

8 “(A) the date an individual relinquishes  
9 United States citizenship, or

10 “(B) in the case of a long-term resident of  
11 the United States, the date of the event de-  
12 scribed in clause (i) or (ii) of paragraph (1)(B).

13 “(3) RELINQUISHMENT OF CITIZENSHIP.—A  
14 citizen shall be treated as relinquishing his United  
15 States citizenship on the earliest of—

16 “(A) the date the individual renounces his  
17 United States nationality before a diplomatic or  
18 consular officer of the United States pursuant  
19 to paragraph (5) of section 349(a) of the Immi-  
20 gration and Nationality Act (8 U.S.C.  
21 1481(a)(5)),

22 “(B) the date the individual furnishes to  
23 the United States Department of State a signed  
24 statement of voluntary relinquishment of  
25 United States nationality confirming the per-



1 formance of an act of expatriation specified in  
2 paragraph (1), (2), (3), or (4) of section 349(a)  
3 of the Immigration and Nationality Act (8  
4 U.S.C. 1481(a) (1)–(4)),

5 “(C) the date the United States Depart-  
6 ment of State issues to the individual a certifi-  
7 cate of loss of nationality, or

8 “(D) the date a court of the United States  
9 cancels a naturalized citizen’s certificate of nat-  
10 uralization.

11 Subparagraph (A) or (B) shall not apply to any indi-  
12 vidual unless the renunciation or voluntary relin-  
13 quishment is subsequently approved by the issuance  
14 to the individual of a certificate of loss of nationality  
15 by the United States Department of State.

16 “(4) LONG-TERM RESIDENT.—

17 “(A) IN GENERAL.—The term ‘long-term  
18 resident’ means any individual (other than a  
19 citizen of the United States) who is a lawful  
20 permanent resident of the United States in at  
21 least 8 taxable years during the period of 15  
22 taxable years ending with the taxable year dur-  
23 ing which the sale under subsection (a)(1) is  
24 treated as occurring. For purposes of the pre-  
25 ceding sentence, an individual shall not be

1 treated as a lawful permanent resident for any  
2 taxable year if such individual is treated as a  
3 resident of a foreign country for the taxable  
4 year under the provisions of a tax treaty be-  
5 tween the United States and the foreign coun-  
6 try and does not waive the benefits of such  
7 treaty applicable to residents of the foreign  
8 country.

9 “(B) SPECIAL RULE.—For purposes of  
10 subparagraph (A), there shall not be taken into  
11 account—

12 “(i) any taxable year during which  
13 any prior sale is treated under subsection  
14 (a)(1) as occurring, or

15 “(ii) any taxable year prior to the tax-  
16 able year referred to in clause (i).

17 “(f) SPECIAL RULES APPLICABLE TO BENE-  
18 FICIARIES’ INTERESTS IN TRUST.—

19 “(1) DETERMINATION OF BENEFICIARIES’ IN-  
20 TEREST IN TRUST.—For purposes of this section—

21 “(A) GENERAL RULE.—A beneficiary’s in-  
22 terest in a trust shall be based upon all relevant  
23 facts and circumstances, including the terms of  
24 the trust instrument and any letter of wishes or  
25 similar document, historical patterns of trust

1 distributions, and the existence of and functions  
2 performed by a trust protector or any similar  
3 adviser.

4 “(B) SPECIAL RULE.—The remaining in-  
5 terests in the trust not determined under sub-  
6 paragraph (A) to be held by any beneficiary  
7 shall be allocated first to the grantor, if a bene-  
8 ficiary, and then to other beneficiaries under  
9 rules prescribed by the Secretary similar to the  
10 rules of intestate succession.

11 “(C) CONSTRUCTIVE OWNERSHIP.—If a  
12 beneficiary of a trust is a corporation, partner-  
13 ship, trust, or estate, the shareholders, part-  
14 ners, or beneficiaries shall be deemed to be the  
15 trust beneficiaries for purposes of this section.

16 “(D) TAXPAYER RETURN POSITION.—A  
17 taxpayer shall clearly indicate on its income tax  
18 return—

19 “(i) the methodology used to deter-  
20 mine that taxpayer’s trust interest under  
21 this section, and

22 “(ii) if the taxpayer knows (or has  
23 reason to know) that any other beneficiary  
24 of such trust is using a different methodol-

1           ogy to determine such beneficiary's trust  
2           interest under this section.

3           “(2) DEEMED SALE IN CASE OF TRUST INTER-  
4           EST.—If an individual who is an expatriate is treat-  
5           ed under paragraph (1) as holding an interest in a  
6           trust for purposes of this section—

7           “(A) the individual shall not be treated as  
8           having sold such interest,

9           “(B) such interest shall be treated as a  
10          separate share in the trust, and

11          “(C)(i) such separate share shall be treat-  
12          ed as a separate trust consisting of the assets  
13          allocable to such share,

14          “(ii) the separate trust shall be treated as  
15          having sold its assets immediately before the ex-  
16          patriation date for their fair market value and  
17          as having distributed all of its assets to the in-  
18          dividual as of such time, and

19          “(iii) the individual shall be treated as hav-  
20          ing recontributed the assets to the separate  
21          trust.

22          Subsection (a)(2) shall apply to any income, gain, or  
23          loss of the individual arising from a distribution de-  
24          scribed in subparagraph (C)(ii).

1       “(g) TERMINATION OF DEFERRALS, ETC.—On the  
2 date any property held by an individual is treated as sold  
3 under subsection (a), notwithstanding any other provision  
4 of this title—

5           “(1) any period during which recognition of in-  
6 come or gain is deferred shall terminate, and

7           “(2) any extension of time for payment of tax  
8 shall cease to apply and the unpaid portion of such  
9 tax shall be due and payable at the time and in the  
10 manner prescribed by the Secretary.

11       “(h) RULES RELATING TO PAYMENT OF TAX.—

12           “(1) IMPOSITION OF TENTATIVE TAX.—

13           “(A) IN GENERAL.—If an individual is re-  
14 quired to include any amount in gross income  
15 under subsection (a) for any taxable year, there  
16 is hereby imposed, immediately before the expa-  
17 triation date, a tax in an amount equal to the  
18 amount of tax which would be imposed if the  
19 taxable year were a short taxable year ending  
20 on the expatriation date.

21           “(B) DUE DATE.—The due date for any  
22 tax imposed by subparagraph (A) shall be the  
23 90th day after the expatriation date.

24           “(C) TREATMENT OF TAX.—Any tax paid  
25 under subparagraph (A) shall be treated as a

1 payment of the tax imposed by this chapter for  
2 the taxable year to which subsection (a) applies.

3 “(2) DEFERRAL OF TAX.—The payment of any  
4 tax attributable to amounts included in gross income  
5 under subsection (a) may be deferred to the same  
6 extent, and in the same manner, as any tax imposed  
7 by chapter 11, except that the Secretary may extend  
8 the period for extension of time for paying tax under  
9 section 6161 to such number of years as the Sec-  
10 retary determines appropriate.

11 “(3) RULES RELATING TO SECURITY INTER-  
12 ESTS.—

13 “(A) ADEQUACY OF SECURITY INTER-  
14 ESTS.—In determining the adequacy of any se-  
15 curity to be provided under this section, the  
16 Secretary may take into account the principles  
17 of section 2056A.

18 “(B) SPECIAL RULE FOR TRUST.—If a  
19 taxpayer is required by this section to provide  
20 security in connection with any tax imposed by  
21 reason of this section with respect to the hold-  
22 ing of an interest in a trust and any trustee of  
23 such trust is an individual citizen of the United  
24 States or a domestic corporation, such trustee  
25 shall be required to provide such security upon

1 notification by the taxpayer of such  
2 requirement.

3 “(i) COORDINATION WITH ESTATE AND GIFT  
4 TAXES.—If subsection (a) applies to property held by an  
5 individual for any taxable year and—

6 “(1) such property is includible in the gross es-  
7 tate of such individual solely by reason of section  
8 2107, or

9 “(2) section 2501 applies to a transfer of such  
10 property by such individual solely by reason of sec-  
11 tion 2501(a)(3),

12 then there shall be allowed as a credit against the addi-  
13 tional tax imposed by section 2101 or 2501, whichever is  
14 applicable, solely by reason of section 2107 or 2501(a)(3)  
15 an amount equal to the increase in the tax imposed by  
16 this chapter for such taxable year by reason of this  
17 section.

18 “(j) REGULATIONS.—The Secretary shall prescribe  
19 such regulations as may be necessary or appropriate to  
20 carry out the purposes of this section, including regula-  
21 tions to prevent double taxation by ensuring that—

22 “(1) appropriate adjustments are made to basis  
23 to reflect gain recognized by reason of subsection (a)  
24 and the exclusion provided by subsection (b),

1           “(2) no interest in property is treated as held  
2 for purposes of this section by more than one tax-  
3 payer, and

4           “(3) any gain by reason of a deemed sale under  
5 subsection (a) of an interest in a corporation, part-  
6 nership, trust, or estate is reduced to reflect that  
7 portion of such gain which is attributable to an in-  
8 terest in a trust which a shareholder, partner, or  
9 beneficiary is treated as holding directly under sub-  
10 section (f)(1)(C).

11       “(k) CROSS REFERENCE.—

**“For income tax treatment of individuals who ter-  
minate United States citizenship, see section  
7701(a)(47).”**

12       (b) DEFINITION OF TERMINATION OF UNITED  
13 STATES CITIZENSHIP.—Section 7701(a) of the Internal  
14 Revenue Code of 1986 is amended by adding at the end  
15 the following new paragraph:

16           “(47) TERMINATION OF UNITED STATES CITI-  
17 ZENSHIP.—An individual shall not cease to be treat-  
18 ed as a United States citizen before the date on  
19 which the individual’s citizenship is treated as relin-  
20 quished under section 877A(e)(3).”

21       (c) COORDINATION WITH HEALTH INSURANCE  
22 PORTABILITY AND ACCOUNTABILITY ACT OF 1996.—Sec-  
23 tion 511 of the Health Insurance Portability and Account-  
24 ability Act of 1996, and the amendments made by such



1 section, are hereby repealed and the Internal Revenue  
2 Code of 1986 shall be applied as if such section and such  
3 amendments had never been enacted.

4 (d) CONFORMING AMENDMENTS.—

5 (1) Section 877 of the Internal Revenue Code  
6 of 1986 is amended by adding at the end the follow-  
7 ing new subsection:

8 “(f) APPLICATION.—This section shall not apply to  
9 any individual who relinquishes (within the meaning of  
10 section 877A(e)(3)) United States citizenship on or after  
11 February 6, 1995.”

12 (2) Section 2107(e) of such Code is amended by  
13 adding at the end the following new paragraph:

14 “(3) CROSS REFERENCE.—For credit against  
15 the tax imposed by subsection (a) for expatriation  
16 tax, see section 877A(i).”

17 (3) Section 2501(a)(3) of such Code is amended  
18 by adding at the end the following new flush  
19 sentence:

20 “For credit against the tax imposed under this sec-  
21 tion by reason of this paragraph, see section  
22 877A(i).”

23 (4) Section 6851 of such Code is amended by  
24 striking subsection (d) and by redesignating sub-  
25 section (e) as subsection (d).

1           (5) Paragraph (10) of section 7701(b) of such  
 2 Code is amended by adding at the end the following  
 3 new sentence: “This paragraph shall not apply to  
 4 any long-term resident of the United States who is  
 5 an expatriate (as defined in section 877A(e)(1)).”

6           (e) CLERICAL AMENDMENT.—The table of sections  
 7 for subpart A of part II of subchapter N of chapter 1  
 8 of the Internal Revenue Code of 1986 is amended by in-  
 9 serting after the item relating to section 877 the following  
 10 new item:

“Sec. 877A. Tax responsibilities of expatriation.”

11           (f) EFFECTIVE DATE.—

12           (1) IN GENERAL.—The amendments made by  
 13 this section (other than subsection (c)) shall apply to  
 14 expatriates (within the meaning of section 877A(e)  
 15 of the Internal Revenue Code of 1986, as added by  
 16 this section) whose expatriation date (as so defined)  
 17 occurs on or after February 6, 1995.

18           (2) DUE DATE FOR TENTATIVE TAX.—The due  
 19 date under section 877A(h)(1)(B) of such Code shall  
 20 in no event occur before the 90th day after the date  
 21 of the enactment of this Act.

22 **SEC. 202. BASIS OF ASSETS OF NONRESIDENT INDIVIDUALS**  
 23 **BECOMING CITIZENS OR RESIDENTS.**

24           (a) IN GENERAL.—Part IV of subchapter O of chap-  
 25 ter 1 of the Internal Revenue Code of 1986 (relating to

1 special rules for gain or loss on disposition of property)  
2 is amended by redesignating section 1061 as section 1062  
3 and by inserting after section 1060 the following new sec-  
4 tion:

5 **“SEC. 1061. BASIS OF ASSETS OF NONRESIDENT INDIVID-**  
6 **UALS BECOMING CITIZENS OR RESIDENTS.**

7 “(a) GENERAL RULE.—If a nonresident alien individ-  
8 ual becomes a citizen or resident of the United States,  
9 gain or loss on the disposition of any property held on  
10 the date the individual becomes such a citizen or resident  
11 shall be determined by substituting, as of the applicable  
12 date, the fair market value of such property (on the appli-  
13 cable date) for its cost basis.

14 “(b) EXCEPTION FOR DEPRECIATION.—Any deduc-  
15 tion under this chapter for depreciation, depletion, or am-  
16 ortization shall be determined without regard to the appli-  
17 cation of this section.

18 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-  
19 poses of this section—

20 “(1) APPLICABLE DATE.—The term ‘applicable  
21 date’ means, with respect to any property to which  
22 subsection (a) applies, the earlier of—

23 “(A) the date the individual becomes a citi-  
24 zen or resident of the United States, or

1           “(B) the date the property first becomes  
2           subject to tax under this subtitle by reason of  
3           being used in a United States trade or business  
4           or by reason of becoming a United States real  
5           property interest (within the meaning of section  
6           897(c)(1)).

7           “(2) RESIDENT.—The term ‘resident’ does not  
8           include an individual who is treated as a resident of  
9           a foreign country under the provisions of a tax treat-  
10          ty between the United States and a foreign country  
11          and who does not waive the benefits of such treaty  
12          applicable to residents of the foreign country.

13          “(3) TRUSTS.—A trust shall not be treated as  
14          an individual.

15          “(4) ELECTION NOT TO HAVE SECTION  
16          APPLY.—An individual may elect not to have this  
17          section apply solely for purposes of determining gain  
18          with respect to any property. Such election shall  
19          apply only to property specified in the election and,  
20          once made, shall be irrevocable.

21          “(5) SECTION ONLY TO APPLY ONCE.—This  
22          section shall apply only with respect to the first time  
23          the individual becomes either a citizen or resident of  
24          the United States.



1 **SEC. 203. ELIMINATION OF EXCLUSION FOR CITIZENS OR**  
2 **RESIDENTS OF UNITED STATES LIVING**  
3 **ABROAD.**

4 Section 911 of the Internal Revenue Code of 1986  
5 (relating to citizens or residents of the United States living  
6 abroad) is amended by redesignating subsection (f) as sub-  
7 section (g) and by inserting after subsection (e) the follow-  
8 ing new subsection:

9 “(f) **TERMINATION.**—This section shall not apply to  
10 any taxable year beginning after December 31, 1996.”

11 **SEC. 204. DISPOSITION OF STOCK IN DOMESTIC CORPO-**  
12 **RATIONS BY 10-PERCENT FOREIGN SHARE-**  
13 **HOLDERS.**

14 (a) **GENERAL RULE.**—Subpart D of part II of sub-  
15 chapter N of chapter 1 of the Internal Revenue Code of  
16 1986 (relating to miscellaneous provisions) is amended by  
17 adding at the end the following new section:

18 **“SEC. 899. DISPOSITION OF STOCK IN DOMESTIC CORPO-**  
19 **RATIONS BY 10-PERCENT FOREIGN SHARE-**  
20 **HOLDERS.**

21 “(a) **GENERAL RULE.**—

22 “(1) **TREATMENT AS EFFECTIVELY CONNECTED**  
23 **WITH UNITED STATES TRADE OR BUSINESS.**—For  
24 purposes of this title, if any nonresident alien indi-  
25 vidual or foreign corporation is a 10-percent share-  
26 holder in any domestic corporation, any gain or loss

1 of such individual or foreign corporation from the  
2 disposition of any stock in such domestic corporation  
3 shall be taken into account—

4 “(A) in the case of a nonresident alien in-  
5 dividual, under section 871(b)(1), or

6 “(B) in the case of a foreign corporation,  
7 under section 882(a)(1),

8 as if the taxpayer were engaged during the taxable  
9 year in a trade or business within the United States  
10 through a permanent establishment in the United  
11 States and as if such gain or loss were effectively  
12 connected with such trade or business and attrib-  
13 utable to such permanent establishment. Notwith-  
14 standing section 865, any such gain or loss shall be  
15 treated as from sources in the United States.

16 “(2) 26-PERCENT MINIMUM TAX ON NON-  
17 RESIDENT ALIEN INDIVIDUALS.—

18 “(A) IN GENERAL.—In the case of any  
19 nonresident alien individual, the amount deter-  
20 mined under section 55(b)(1)(A) shall not be  
21 less than 26 percent of the lesser of—

22 “(i) the individual’s alternative mini-  
23 mum taxable income (as defined in section  
24 55(b)(2)) for the taxable year, or

1                   “(ii) the individual’s net taxable stock  
2                   gain for the taxable year.

3                   “(B) NET TAXABLE STOCK GAIN.—For  
4                   purposes of subparagraph (A), the term ‘net  
5                   taxable stock gain’ means the excess of—

6                   “(i) the aggregate gains for the tax-  
7                   able year from dispositions of stock in do-  
8                   mestic corporations with respect to which  
9                   such individual is a 10-percent share-  
10                  holder, over

11                  “(ii) the aggregate of the losses for  
12                  the taxable year from dispositions of such  
13                  stock.

14                  “(C) COORDINATION WITH SECTION  
15                  897(a)(2).—Section 897(a)(2)(A) shall not apply  
16                  to any nonresident alien individual for any tax-  
17                  able year for which such individual has a net  
18                  taxable stock gain, but the amount of such net  
19                  taxable stock gain shall be increased by the  
20                  amount of such individual’s net United States  
21                  real property gain (as defined in section  
22                  897(a)(2)(B)) for such taxable year.

23                  “(b) 10-PERCENT SHAREHOLDER.—



1           “(1) IN GENERAL.—For purposes of this sec-  
2           tion, the term ‘10-percent shareholder’ means any  
3           person who at any time during the shorter of—

4                   “(A) the period beginning on January 1,  
5                   1996, and ending on the date of the disposition,  
6                   or

7                   “(B) the 5-year period ending on the date  
8                   of the disposition,  
9           owned 10 percent or more (by vote or value) of the  
10           stock in the domestic corporation.

11           “(2) CONSTRUCTIVE OWNERSHIP.—

12                   “(A) IN GENERAL.—Section 318(a) (relat-  
13                   ing to constructive ownership of stock) shall  
14                   apply for purposes of paragraph (1).

15                   “(B) MODIFICATIONS.—For purposes of  
16                   subparagraph (A)—

17                           “(i) paragraph (2)(C) of section  
18                           318(a) shall be applied by substituting ‘10  
19                           percent’ for ‘50 percent’, and

20                           “(ii) paragraph (3)(C) of section  
21                           318(a) shall be applied—

22                                   “(I) by substituting ‘10 percent’  
23                                   for ‘50 percent’, and

24                                   “(II) in any case where such  
25                                   paragraph would not apply but for

1 subclause (I), by considering a cor-  
2 poration as owning the stock (other  
3 than stock in such corporation) owned  
4 by or for any shareholder of such cor-  
5 poration in that proportion which the  
6 value of the stock which such share-  
7 holder owns in such corporation bears  
8 to the value of all stock in such cor-  
9 poration.

10 “(3) TREATMENT OF STOCK HELD BY CERTAIN  
11 PARTNERSHIPS.—

12 “(A) IN GENERAL.—For purposes of this  
13 section, if—

14 “(i) a partnership is a 10-percent  
15 shareholder in any domestic corporation,  
16 and

17 “(ii) 10 percent or more of the capital  
18 or profits interests in such partnership is  
19 held (directly or indirectly) by nonresident  
20 alien individuals or foreign corporations,

21 each partner in such partnership who is not  
22 otherwise a 10-percent shareholder in such cor-  
23 poration shall, with respect to the stock in such  
24 corporation held by the partnership, be treated

1 as a 10-percent shareholder in such corpora-  
2 tion.

3 “(B) EXCEPTION.—

4 “(i) IN GENERAL.—Subparagraph (A)  
5 shall not apply with respect to stock in a  
6 domestic corporation held by any partner-  
7 ship if, at all times during the 5-year pe-  
8 riod ending on the date of the disposition  
9 involved—

10 “(I) the aggregate bases of the  
11 stock and securities in such domestic  
12 corporation held by such partnership  
13 were less than 25 percent of the part-  
14 nership’s net adjusted asset cost, and

15 “(II) the partnership did not own  
16 50 percent or more (by vote or value)  
17 of the stock in such domestic corpora-  
18 tion.

19 The Secretary may by regulations dis-  
20 regard any failure to meet the require-  
21 ments of subclause (I) where the partner-  
22 ship normally met such requirements dur-  
23 ing such 5-year period.

1           “(ii) NET ADJUSTED ASSET COST.—  
2           For purposes of clause (i), the term ‘net  
3           adjusted asset cost’ means—

4                   “(I) the aggregate bases of all of  
5                   the assets of the partnership other  
6                   than cash and cash items, reduced by

7                           “(II) the portion of the liabilities  
8                           of the partnership not allocable (on a  
9                           proportionate basis) to assets excluded  
10                           under subclause (I).

11           “(C) EXCEPTION NOT TO APPLY TO 50-  
12           PERCENT PARTNERS.—Subparagraph (B) shall  
13           not apply in the case of any partner owning (di-  
14           rectly or indirectly) more than 50 percent of the  
15           capital or profits interests in the partnership at  
16           any time during the 5-year period ending on the  
17           date of the disposition.

18           “(D) SPECIAL RULES.—For purposes of  
19           subparagraphs (B) and (C)—

20                   “(i) TREATMENT OF PREDE-  
21                   CESSORS.—Any reference to a partnership  
22                   or corporation shall be treated as including  
23                   a reference to any predecessor thereof.

24                   “(ii) PARTNERSHIP NOT IN EXIST-  
25                   ENCE.—If any partnership was not in ex-

1           istence throughout the entire 5-year period  
2           ending on the date of the disposition, only  
3           the portion of such period during which  
4           the partnership (or any predecessor) was  
5           in existence shall be taken into account.

6           “(E) OTHER PASS-THRU ENTITIES;  
7           TIERED ENTITIES.—Rules similar to the rules  
8           of the preceding provisions of this paragraph  
9           shall also apply in the case of any pass-thru en-  
10          tity other than a partnership and in the case of  
11          tiered partnerships and other entities.

12          “(c) COORDINATION WITH NONRECOGNITION PROVI-  
13          SIONS; ETC.—

14                 “(1) COORDINATION WITH NONRECOGNITION  
15          PROVISIONS.—

16                         “(A) IN GENERAL.—Except as provided in  
17                         subparagraph (B), any nonrecognition provision  
18                         shall apply for purposes of this section to a  
19                         transaction only in the case of—

20                                 “(i) an exchange of stock in a domes-  
21                                 tic corporation for other property the sale  
22                                 of which would be subject to taxation  
23                                 under this chapter, or

24                                 “(ii) a distribution with respect to  
25                                 which gain or loss would not be recognized

1 under section 336 if the sale of the distrib-  
2 uted property by the distributee would be  
3 subject to tax under this chapter.

4 “(B) REGULATIONS.—The Secretary shall  
5 prescribe regulations (which are necessary or  
6 appropriate to prevent the avoidance of Federal  
7 income taxes) providing—

8 “(i) the extent to which nonrecogni-  
9 tion provisions shall, and shall not, apply  
10 for purposes of this section, and

11 “(ii) the extent to which—

12 “(I) transfers of property in a re-  
13 organization, and

14 “(II) changes in interests in, or  
15 distributions from, a partnership,  
16 trust, or estate,

17 shall be treated as sales of property at fair  
18 market value.

19 “(C) NONRECOGNITION PROVISION.—For  
20 purposes of this paragraph, the term ‘non-  
21 recognition provision’ means any provision of  
22 this title for not recognizing gain or loss.

23 “(2) CERTAIN OTHER RULES MADE APPLICA-  
24 BLE.—For purposes of this section, rules similar to

1 the rules of subsections (g) and (j) of section 897  
2 shall apply.

3 “(d) CERTAIN INTEREST TREATED AS STOCK.—For  
4 purposes of this section—

5 “(1) any option or other right to acquire stock  
6 in a domestic corporation,

7 “(2) the conversion feature of any debt instru-  
8 ment issued by a domestic corporation, and

9 “(3) to the extent provided in regulations, any  
10 other interest in a domestic corporation other than  
11 an interest solely as creditor,

12 shall be treated as stock in such corporation.

13 “(e) TREATMENT OF CERTAIN GAIN AS A DIVI-  
14 DEND.—In the case of any gain which would be subject  
15 to tax by reason of this section but for a treaty and which  
16 results from any distribution in liquidation or redemption,  
17 for purposes of this subtitle, such gain shall be treated  
18 as a dividend to the extent of the earnings and profits  
19 of the domestic corporation attributable to the stock.  
20 Rules similar to the rules of section 1248(c) (determined  
21 without regard to paragraph (2)(D) thereof) shall apply  
22 for purposes of the preceding sentence.

23 “(f) REGULATIONS.—The Secretary shall prescribe  
24 such regulations as may be appropriate to carry out the  
25 purposes of this section, including—

1           “(1) regulations coordinating the provisions of  
2           this section with the provisions of section 897, and

3           “(2) regulations aggregating stock held by a  
4           group of persons acting together.”

5           (b) WITHHOLDING OF TAX.—Subchapter A of chap-  
6           ter 3 of such Code is amended by adding at the end the  
7           following new section:

8           **“SEC. 1447. WITHHOLDING OF TAX ON CERTAIN STOCK**  
9                               **DISPOSITIONS.**

10          “(a) GENERAL RULE.—Except as otherwise provided  
11          in this section, in the case of any disposition of stock in  
12          a domestic corporation by a foreign person who is a 10-  
13          percent shareholder in such corporation, the withholding  
14          agent shall deduct and withhold a tax equal to 10 percent  
15          of the amount realized on the disposition.

16          “(b) EXCEPTIONS.—

17               “(1) STOCK WHICH IS NOT REGULARLY TRAD-  
18               ED.—In the case of a disposition of stock which is  
19               not regularly traded, a withholding agent shall not  
20               be required to deduct and withhold any amount  
21               under subsection (a) if—

22                       “(A) the transferor furnishes to such with-  
23                       holding agent an affidavit by such transferor  
24                       stating, under penalty of perjury, that section



1           899 does not apply to such disposition be-  
2           cause—

3                   “(i) the transferor is not a foreign  
4                   person, or

5                   “(ii) the transferor is not a 10-percent  
6                   shareholder, and

7                   “(B) such withholding agent does not  
8                   know (or have reason to know) that such affida-  
9                   vit is not correct.

10           “(2) STOCK WHICH IS REGULARLY TRADED.—

11                   “(A) IN GENERAL.—Except as provided in  
12                   subparagraph (B), a withholding agent shall  
13                   not be required to deduct and withhold any  
14                   amount under subsection (a) with respect to  
15                   any disposition of regularly traded stock if such  
16                   withholding agent does not know (or have rea-  
17                   son to know) that section 899 applies to such  
18                   disposition.

19                   “(B) SPECIAL RULE WHERE SUBSTANTIAL  
20                   DISPOSITION.—If—

21                   “(i) there is a disposition of regularly  
22                   traded stock in a corporation, and

23                   “(ii) the amount of stock involved in  
24                   such disposition constitutes 1 percent or

1 more (by vote or value) of the stock in  
2 such corporation,  
3 subparagraph (A) shall not apply but para-  
4 graph (1) shall apply as if the disposition in-  
5 volved stock which was not regularly traded.

6 “(C) NOTIFICATION BY FOREIGN PER-  
7 SON.—If section 899 applies to any disposition  
8 by a foreign person of regularly traded stock,  
9 such foreign person shall notify the withholding  
10 agent that section 899 applies to such dispo-  
11 sition.

12 “(3) NONRECOGNITION TRANSACTIONS.—A  
13 withholding agent shall not be required to deduct  
14 and withhold any amount under subsection (a) in  
15 any case where gain or loss is not recognized by rea-  
16 son of section 899(c) (or the regulations prescribed  
17 under such section).

18 “(c) SPECIAL RULE WHERE NO WITHHOLDING.—  
19 If—

20 “(1) there is no amount deducted and withheld  
21 under this section with respect to any disposition to  
22 which section 899 applies, and

23 “(2) the foreign person does not pay the tax  
24 imposed by this subtitle to the extent attributable to  
25 such disposition on the date prescribed therefor

1 for purposes of determining the amount of such tax, the  
2 foreign person's basis in the stock disposed of shall be  
3 treated as zero or such other amount as the Secretary may  
4 determine (and, for purposes of section 6501, the under-  
5 payment of such tax shall be treated as due to a willful  
6 attempt to evade such tax).

7       “(d) DEFINITIONS AND SPECIAL RULES.—For pur-  
8 poses of this section—

9               “(1) WITHHOLDING AGENT.—The term ‘with-  
10 holding agent’ means—

11                       “(A) the last United States person to have  
12 the control, receipt, custody, disposal, or pay-  
13 ment of the amount realized on the disposition,  
14 or

15                       “(B) if there is no such United States per-  
16 son, the person prescribed in regulations.

17               “(2) FOREIGN PERSON.—The term ‘foreign per-  
18 son’ means any person other than a United States  
19 person.

20               “(3) REGULARLY TRADED STOCK.—The term  
21 ‘regularly traded stock’ means any stock of a class  
22 which is regularly traded on an established securities  
23 market.

24               “(4) AUTHORITY TO PRESCRIBE REDUCED  
25 AMOUNT.—At the request of the person making the

1 disposition or the withholding agent, the Secretary  
2 may prescribe a reduced amount to be withheld  
3 under this section if the Secretary determines that  
4 to substitute such reduced amount will not jeopard-  
5 ize the collection of the tax imposed by section  
6 871(b)(1) or 882(a)(1).

7 “(5) OTHER TERMS.—Except as provided in  
8 this section, terms used in this section shall have the  
9 same respective meanings as when used in section  
10 899.

11 “(6) CERTAIN RULES MADE APPLICABLE.—  
12 Rules similar to the rules of section 1445(e) shall  
13 apply for purposes of this section.

14 “(e) REGULATIONS.—The Secretary shall prescribe  
15 such regulations as may be appropriate to carry out the  
16 purposes of this section, including regulations coordinat-  
17 ing the provisions of this section with the provisions of  
18 sections 1445 and 1446.”

19 (c) EXCEPTION FROM BRANCH PROFITS TAX.—Sub-  
20 paragraph (C) of section 884(d)(2) of such Code is amend-  
21 ed to read as follows:

22 “(C) gain treated as effectively connected  
23 with the conduct of a trade or business within  
24 the United States under—

1                   “(i) section 897 in the case of the  
2                   disposition of a United States real property  
3                   interest       described       in       section  
4                   897(c)(1)(A)(ii), or  
5                   “(ii) section 899.”.

6       (d) REPORTS WITH RESPECT TO CERTAIN DIS-  
7 TRIBUTIONS.—Paragraph (2) of section 6038B(a) of such  
8 Code (relating to notice of certain transfers to foreign per-  
9 son) is amended by striking “section 336” and inserting  
10 “section 302, 331, or 336”.

11       (e) CLERICAL AMENDMENTS.—

12               (1) The table of sections for subpart D of part  
13       II of subchapter N of chapter 1 of such Code is  
14       amended by adding at the end the following new  
15       item:

                  “Sec. 899. Dispositions of stock in domestic corporations by 10-  
                  percent foreign shareholders.”

16               (2) The table of sections for subchapter A of  
17       chapter 3 of such Code is amended by adding at the  
18       end the following new item:

                  “Sec. 1447. Withholding of tax on certain stock dispositions.”

19       (f) EFFECTIVE DATE.—

20               (1) IN GENERAL.—Except as otherwise pro-  
21       vided in this subsection, the amendments made by  
22       this section shall apply to dispositions after the date  
23       of the enactment of this Act, except that section

1 1447 of such Code (as added by this section) shall  
2 not apply to any disposition before the date 6  
3 months after the date of the enactment of this Act.

4 (2) COORDINATION WITH TREATIES.—

5 (A) IN GENERAL.—Sections 899 (other  
6 than subsection (e) thereof) and 1447 of such  
7 Code (as added by this section) shall not apply  
8 to any disposition if such disposition is by a  
9 qualified resident of a foreign country and the  
10 application of such sections to such disposition  
11 would be contrary to any treaty between the  
12 United States and such foreign country which  
13 is in effect on the date of the enactment of this  
14 Act and at the time of such disposition.

15 (B) QUALIFIED RESIDENT.—For purposes  
16 of subparagraph (A), the term “qualified resi-  
17 dent” means any resident of the foreign country  
18 entitled to the benefits of the treaty referred to  
19 in subparagraph (A); except that such term  
20 shall not include a corporation unless such cor-  
21 poration is a qualified resident of such country  
22 (as defined in section 884(e)(4) of such Code).

1 **SEC. 205. ALTERNATIVE MINIMUM TAX ON CORPORATIONS**  
 2 **IMPORTING PRODUCTS INTO THE UNITED**  
 3 **STATES AT ARTIFICIALLY INFLATED PRICES.**

4 (a) **IN GENERAL.**—Subchapter A of chapter 1 of the  
 5 Internal Revenue Code of 1986 (relating to determination  
 6 of tax liability) is amended by adding at the end the fol-  
 7 lowing new part:

8 **“PART VIII—ALTERNATIVE MINIMUM TAX ON**  
 9 **CORPORATIONS IMPORTING PRODUCTS**  
 10 **INTO THE UNITED STATES AT ARTIFICIALLY**  
 11 **INFLATED PRICES**

“Sec. 59B. Alternative minimum tax on corporations importing products into  
 the United States at artificially inflated prices.

12 **“SEC. 59B. ALTERNATIVE MINIMUM TAX ON CORPORA-**  
 13 **TIONS IMPORTING PRODUCTS INTO THE**  
 14 **UNITED STATES AT ARTIFICIALLY INFLATED**  
 15 **PRICES.**

16 **“(a) IMPOSITION OF TAX.**—In the case of a corpora-  
 17 tion to which this section applies, there is hereby imposed  
 18 an alternative minimum tax equal to 3 percent of net busi-  
 19 ness receipts of the corporation for the taxable year.

20 **“(b) TAXPAYERS TO WHICH SECTION APPLIES.**—  
 21 This section shall apply to any corporation, foreign or do-  
 22 mestic, if—

23 **“(1) gross sales in the United States during the**  
 24 **tax year of parts or products manufactured by the**

1 corporation, or any subsidiary or affiliate controlled  
2 by the corporation, exceeded \$10,000,000,

3 “(2) during that same tax year parts or prod-  
4 ucts manufactured by the corporation, or any sub-  
5 sidiary or affiliate controlled by the corporation, with  
6 a customs value in excess of \$10,000,000 were im-  
7 ported into the United States, and

8 “(3) its tax obligation under this section ex-  
9 ceeds its total tax obligation under all other sections  
10 of this title.

11 “(c) CREDIT FOR TAXES PAID.—There shall be a  
12 nonrefundable credit against the taxes owed under this  
13 section equal to the total of all other taxes paid by the  
14 corporation under this title.

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

16 “(1) NET BUSINESS RECEIPTS.—The term ‘net  
17 business receipts’ means the value of all parts or  
18 products sold in the United States, excluding—

19 “(A) the value of parts or products sold for  
20 export,

21 “(B) expenses paid for parts or products  
22 produced in the United States,

23 “(C) expenses paid for services performed  
24 in the United States, and



1           “(D) amounts paid for income, sales or use  
2           taxes imposed by any State, or political subdivi-  
3           sion thereof, or by the District of Columbia,  
4           Puerto Rico, Guam, or the Virgin Islands.

5           “(2) SUBSIDIARY OR AFFILIATE CONTROLLED  
6           BY THE CORPORATION.—An entity shall be consid-  
7           ered to be a ‘subsidiary or affiliate controlled by the  
8           corporation’ if the corporation owns 5 percent or  
9           more of any class of stock of the entity or if the cor-  
10          poration exercises control over a majority of the  
11          board of directors of the entity.”

12          (b) CLERICAL AMENDMENT.—The table of parts for  
13          such subchapter A is amended by adding at the end the  
14          following new item:

                    “Part VIII. Alternative minimum tax on corporations importing  
                                    products into the United States at artificially in-  
                                    flated prices.”

15          (c) EFFECTIVE DATE.—The amendments made by  
16          this section shall apply to taxable years beginning after  
17          December 31, 1996.

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