

108TH CONGRESS
1ST SESSION

S. 596

To amend the Internal Revenue Code of 1986 to encourage the investment of foreign earnings within the United States for productive business investments and job creation.

IN THE SENATE OF THE UNITED STATES

MARCH 11, 2003

Mr. ENSIGN (for himself, Mrs. BOXER, Mr. SMITH, Mr. ALLEN, Mr. ENZI, and Mr. BAYH) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to encourage the investment of foreign earnings within the United States for productive business investments and job creation.

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 “Invest in the U.S.A.
5 Act of 2003”.

1 **SEC. 2. TOLL TAX ON EXCESS QUALIFIED FOREIGN DIS-**
 2 **TRIBUTION AMOUNT.**

3 (a) IN GENERAL.—Subpart F of part III of sub-
 4 chapter N of chapter 1 of the Internal Revenue Code of
 5 1986 is amended by adding at the end the following new
 6 section:

7 **“SEC. 965. TOLL TAX IMPOSED ON EXCESS QUALIFIED FOR-**
 8 **EIGN DISTRIBUTION AMOUNT.**

9 “(a) TOLL TAX IMPOSED ON EXCESS QUALIFIED
 10 FOREIGN DISTRIBUTION AMOUNT.—If a corporation
 11 elects the application of this section, a tax shall be im-
 12 posed on the taxpayer in an amount equal to 5.25 percent
 13 of—

14 “(1) the taxpayer’s excess qualified foreign dis-
 15 tribution amount, and

16 “(2) the amount determined under section 78
 17 which is attributable to such excess qualified foreign
 18 distribution amount.

19 Such tax shall be imposed in lieu of the tax imposed under
 20 section 11 or 55 on the amounts described in paragraphs
 21 (1) and (2) for such taxable year.

22 “(b) EXCESS QUALIFIED FOREIGN DISTRIBUTION
 23 AMOUNT.—For purposes of this section—

24 “(1) IN GENERAL.—The term ‘excess qualified
 25 foreign distribution amount’ means the excess (if
 26 any) of—

1 “(A) dividends received by the taxpayer
2 during the taxable year which are—

3 “(i) from 1 or more corporations
4 which are controlled foreign corporations
5 in which the taxpayer is a United States
6 shareholder on the date such dividends are
7 paid, and

8 “(ii) described in a domestic reinvest-
9 ment plan approved by the taxpayer’s
10 president, chief executive officer, or com-
11 parable official before the payment of such
12 dividends and subsequently approved by
13 the taxpayer’s board of directors, manage-
14 ment committee, executive committee, or
15 similar body, which plan shall provide for
16 the reinvestment of such dividends in the
17 United States, including as a source for
18 the funding of worker hiring and training;
19 infrastructure; research and development;
20 capital investments; or the financial sta-
21 bilization of the corporation for the pur-
22 poses of job retention or creation, over

23 “(B) the base dividend amount.

24 “(2) BASE DIVIDEND AMOUNT.—The term
25 ‘base dividend amount’ means an amount designated

1 under subsection (c)(7), but not less than the aver-
2 age amount of dividends received during the fixed
3 base period from 1 or more corporations which are
4 controlled foreign corporations in which the taxpayer
5 is a United States shareholder on the date such divi-
6 dends are paid.

7 “(3) FIXED BASE PERIOD.—

8 “(A) IN GENERAL.—The term ‘fixed base
9 period’ means each of 3 taxable years which are
10 among the 5 most recent taxable years of the
11 taxpayer ending on or before December 31,
12 2002, determined by disregarding—

13 “(i) the 1 taxable year for which the
14 taxpayer had the highest amount of divi-
15 dends from 1 or more corporations which
16 are controlled foreign corporations relative
17 to the other 4 taxable years, and

18 “(ii) the 1 taxable year for which the
19 taxpayer had the lowest amount of divi-
20 dends from such corporations relative to
21 the other 4 taxable years.

22 “(B) SHORTER PERIOD.—If the taxpayer
23 has fewer than 5 taxable years ending on or be-
24 fore December 31, 2002, then in lieu of apply-
25 ing subparagraph (A), the fixed base period

1 shall mean such shorter period representing all
2 of the taxable years of the taxpayer ending on
3 or before December 31, 2002.

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

6 “(1) DIVIDENDS.—The term ‘dividend’ means a
7 dividend as defined in section 316, except that the
8 term shall also include amounts described in section
9 951(a)(1)(B), and shall exclude amounts described
10 in sections 78 and 959.

11 “(2) CONTROLLED FOREIGN CORPORATIONS
12 AND UNITED STATES SHAREHOLDERS.—The term
13 ‘controlled foreign corporation’ shall have the same
14 meaning as under section 957(a) and the term
15 ‘United States shareholder’ shall have the same
16 meaning as under section 951(b).

17 “(3) FOREIGN TAX CREDITS.—The amount of
18 any income, war, profits, or excess profit taxes paid
19 (or deemed paid under sections 902 and 960) or ac-
20 crued by the taxpayer with respect to the excess
21 qualified foreign distribution amount for which a
22 credit would be allowable under section 901 in the
23 absence of this section, shall be reduced by 85 per-
24 cent.

1 “(4) FOREIGN TAX CREDIT LIMITATION.—For
 2 all purposes of section 904, there shall be dis-
 3 regarded 85 percent of—

4 “(A) the excess qualified foreign distribu-
 5 tion amount,

6 “(B) the amount determined under section
 7 78 which is attributable to such excess qualified
 8 foreign distribution amount, and

9 “(C) the amounts (including assets, gross
 10 income, and other relevant bases of apportion-
 11 ment) which are attributable to the excess
 12 qualified foreign distribution amount which
 13 would, determined without regard to this sec-
 14 tion, be used to apportion the expenses, losses,
 15 and deductions of the taxpayer under section
 16 861 and 864 in determining its taxable income
 17 from sources without the United States.

18 For purposes of applying subparagraph (C), the
 19 principles of section 864(e)(3)(A) shall apply.

20 “(5) TREATMENT OF ACQUISITIONS AND DIS-
 21 POSITIONS.—Rules similar to the rules of section
 22 41(f)(3) shall apply in the case of acquisitions or
 23 dispositions of controlled foreign corporations occur-
 24 ring on or after the first day of the earliest taxable

1 year taken into account in determining the fixed
2 base period.

3 “(6) TREATMENT OF CONSOLIDATED
4 GROUPS.—Members of an affiliated group of cor-
5 porations filing a consolidated return under section
6 1501 shall be treated as a single taxpayer in apply-
7 ing the rules of this section.

8 “(7) DESIGNATION OF DIVIDENDS.—Subject to
9 subsection (b)(2), the taxpayer shall designate the
10 particular dividends received during the taxable year
11 from 1 or more corporations which are controlled
12 foreign corporations in which it is a United States
13 shareholder which are dividends excluded from the
14 excess qualified foreign distribution amount. The
15 total amount of such designated dividends shall
16 equal the base dividend amount.

17 “(8) TREATMENT OF EXPENSES, LOSSES, AND
18 DEDUCTIONS.—Any expenses, losses, or deductions
19 of the taxpayer allowable under subchapter B—

20 “(A) shall not be applied to reduce the
21 amounts described in subsection (a)(1), and

22 “(B) shall be applied to reduce other in-
23 come of the taxpayer (determined without re-
24 gard to the amounts described in subsection
25 (a)(1)).

1 “(d) ELECTION.—

2 “(1) IN GENERAL.—An election under this sec-
3 tion shall be made on the taxpayer’s timely filed in-
4 come tax return for the taxable year (determined by
5 taking extensions into account) ending 120 days or
6 more after the date of the enactment of this section,
7 and, once made, may be revoked only with the con-
8 sent of the Secretary.

9 “(2) ALL CONTROLLED FOREIGN CORPORA-
10 TIONS.—The election shall apply to all corporations
11 which are controlled foreign corporations in which
12 the taxpayer is a United States shareholder during
13 the taxable year.

14 “(3) CONSOLIDATED GROUPS.—If a taxpayer is
15 a member of an affiliated group of corporations fil-
16 ing a consolidated return under section 1501 for the
17 taxable year, an election under this section shall be
18 made by the common parent of the affiliated group
19 which includes the taxpayer, and shall apply to all
20 members of the affiliated group.

21 “(e) REGULATIONS.—The Secretary shall prescribe
22 such regulations as may be necessary and appropriate to
23 carry out the purposes of this section, including regula-
24 tions under section 55 and regulations addressing corpora-
25 tions which, during the fixed base period or thereafter,

1 join or leave an affiliated group of corporations filing a
2 consolidated return.”.

3 (b) CONFORMING AMENDMENT.—The table of sec-
4 tions for subpart F of part III of subchapter N of chapter
5 1 of the Internal Revenue Code of 1986 is amended by
6 adding at the end the following new item:

“Sec. 965. Toll tax imposed on excess qualified foreign distribu-
tion amount.”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply only to the first taxable year of
9 the electing taxpayer ending 120 days or more after the
10 date of the enactment of this Act.

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