

115TH CONGRESS
2D SESSION

H. R. 6726

To amend the Internal Revenue Code of 1986 to repeal certain provisions applicable to foreign investment in United States real property.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 6, 2018

Mr. MARCHANT (for himself and Mr. CROWLEY) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to repeal certain provisions applicable to foreign investment in United States real property.

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 America
5 Act”.

1 **SEC. 2. REPEAL OF AMENDMENTS MADE BY THE FOREIGN**
2 **INVESTMENT IN REAL PROPERTY TAX ACT OF**
3 **1980 (“FIRPTA”).**

4 (a) REPEAL OF CAPITAL GAINS TAX ON DISPOSITION
5 OF INVESTMENTS IN UNITED STATES REAL PROPERTY
6 BY FOREIGN CITIZENS.—

7 (1) IN GENERAL.—Subpart D of part II of sub-
8 chapter N of chapter 1 of the Internal Revenue Code
9 of 1986 is amended by striking section 897.

10 (2) CONFORMING AMENDMENTS.—

11 (A) Section 852(b)(3) of such Code is
12 amended by striking subparagraph (E).

13 (B) Section 857(b)(3) of such Code is
14 amended by striking subparagraph (E) and by
15 redesignating subparagraph (F) as subpara-
16 graph (E).

17 (C) Section 861(a)(5) of such Code is
18 amended to read as follows:

19 “(5) SALE OR EXCHANGE OF REAL PROP-
20 erty.—Gains, profits, and income from the sale or
21 exchange of interests in real property (as defined in
22 section 856(c)(5)(C), except that such term shall in-
23 clude mineral, oil, and gas royalty interests) located
24 in the United States.”.

25 (D) Section 862(a) of such Code is amend-
26 ed by adding “and” at the end of paragraph

1 (7), by striking paragraph (8), and by redesignig-
2 nating paragraph (9) as paragraph (8).

3 (E) Section 864(c)(8) of such Code is
4 amended by striking subparagraph (C) and by
5 redesignating subparagraphs (D) and (E) as
6 subparagraphs (C) and (D), respectively.

7 (F) Section 871(h)(4)(C)(v)(I) of such
8 Code is amended by striking “other than prop-
9 erty described in section 897(c)(1) or (g)”.

10 (G) Section 871(k)(2) of such Code is
11 amended by striking subparagraph (E).

12 (H) Section 871(n) of such Code is amend-
13 ed by striking paragraph (7).

14 (I) Section 882(a) of such Code is amend-
15 ed by striking paragraph (3).

16 (J) Section 884(d)(2) of such Code is
17 amended by striking subparagraph (C) and by
18 redesignating subparagraphs (D) and (E) as
19 subparagraphs (C) and (D), respectively.

20 (K) Section 1125 of the Foreign Invest-
21 ment in Real Property Tax Act of 1980 is
22 amended by striking subsections (c) and (d).

23 (3) CLERICAL AMENDMENT.—The table of sec-
24 tions for subpart D of part II of subchapter N of

1 chapter 1 of such Code is amended by striking the
2 item relating to section 897.

3 (b) REPEAL OF WITHHOLDING OF TAX ON DISPOSI-
4 TIONS OF UNITED STATES REAL PROPERTY INTER-
5 ESTS.—

6 (1) IN GENERAL.—Subchapter A of chapter 3
7 of such Code is amended by striking section 1445.

8 (2) CONFORMING AMENDMENTS.—

9 (A) Section 1446(f)(2)(A) of such Code is
10 amended by striking “is not a foreign person”
11 and inserting “is a United States person”.

12 (B) Section 1446(f)(2) of such Code is
13 amended—

14 (i) by striking “section 1445(d)” in
15 subparagraph (B)(i) and inserting “sub-
16 paragraph (C)”; and

17 (ii) by striking subparagraph (C) and
18 inserting the following new subparagraphs:

19 “(C) NOTICE OF FALSE AFFIDAVIT; FOR-
20 EIGN CORPORATIONS.—If the transferor fur-
21 nishes the transferee an affidavit described in
22 subparagraph (A), and

23 “(i) in the case of any transferor’s
24 agent—

1 “(I) such agent has actual knowl-
2 edge that such affidavit is false, or

3 “(II) in the case of an affidavit
4 described in subparagraph (A) fur-
5 nished by a corporation, such corpora-
6 tion is a foreign corporation, or

7 “(ii) in the case of any transferee’s
8 agent, such agent has actual knowledge
9 that such affidavit is false,

10 such agent shall so notify the transferee at such
11 time and in such form and manner as the Sec-
12 retary may require by regulations.

13 “(D) FAILURE TO FURNISH NOTICE.—

14 “(i) IN GENERAL.—If any transferor’s
15 agent or transferee’s agent is required by
16 subparagraph (C) to furnish notice, but
17 fails to furnish such notice at such time or
18 times and in such manner as may be re-
19 quired by regulations, such agent shall
20 have the same duty to deduct and withhold
21 that the transferee would have had if such
22 agent had complied with subparagraph
23 (C).

24 “(ii) LIABILITY LIMITED TO AMOUNT
25 OF COMPENSATION.—An agent’s liability

1 under clause (i) shall be limited to the
2 amount of compensation the agent derives
3 from the transaction.

4 “(E) TRANSFEROR’S AGENT.—For pur-
5 poses of this paragraph, the term ‘transferor’s
6 agent’ means any person who represents the
7 transferor—

8 “(i) in any negotiation with the trans-
9 feree or any transferee’s agent related to
10 the transaction, or

11 “(ii) in settling the transaction.

12 “(F) TRANSFEREE’S AGENT.—For pur-
13 poses of this paragraph, the term ‘transferee’s
14 agent’ means any person who represents the
15 transferee—

16 “(i) in any negotiation with the trans-
17 feror or the transferor’s agent related to
18 the transaction, or

19 “(ii) in settling the transaction.

20 “(G) SETTLEMENT OFFICER NOT TREATED
21 AS TRANSFEROR’S AGENT.—For purposes of
22 this paragraph, a person shall not be treated as
23 a transferor’s agent or transferee’s agent with
24 respect to any transaction merely because such

1 person performs 1 or more of the following
2 acts:

3 “(i) The receipt and the disbursement
4 of any portion of the consideration for the
5 transaction.

6 “(ii) The recording of any document
7 in connection with the transaction.”.

8 (C) Section 1446(f)(4) of such Code is
9 amended—

10 (i) by inserting “or if any transferor’s
11 agent or transferee’s agent fails to with-
12 hold any amount required to be withheld
13 under paragraph (2)(D) (determined with-
14 out regard to clause (ii) thereof),” after
15 “withheld under paragraph (1),” and

16 (ii) by striking “the amount the trans-
17 feree failed to withhold” and inserting “the
18 amount the transferee, transferor’s agent,
19 or transferee’s agent (as the case may be)
20 so failed to withhold”.

21 (D) Section 1446(f) of such Code is
22 amended by striking paragraph (5) and by re-
23 designating paragraph (6) as paragraph (5).

24 (3) CLERICAL AMENDMENT.—The table of sec-
25 tions for subchapter A of chapter 3 of such Code is

1 amended by striking the item relating to section
2 1445.

3 (c) REPEAL OF SPECIAL REPORTING REQUIREMENTS
4 WITH RESPECT TO UNITED STATES REAL PROPERTY IN-
5 TERESTS.—

6 (1) IN GENERAL.—Subpart A of part III of
7 subchapter A of chapter 61 of such Code is amended
8 by striking section 6039C.

9 (2) CONFORMING AMENDMENT.—Section 6652
10 of such Code is amended by striking subsection (f).

11 (3) CLERICAL AMENDMENT.—The table of sec-
12 tions for subpart A of part III of subchapter A of
13 chapter 61 of such Code is amended by striking the
14 item relating to section 6039C.

15 (d) EFFECTIVE DATE.—

16 (1) IN GENERAL.—Except as otherwise pro-
17 vided in this subsection, the amendments made by
18 this section shall apply to dispositions and distribu-
19 tions after the date of the enactment of this Act.

20 (2) REPORTING REQUIREMENTS.—

21 (A) IN GENERAL.—The amendments made
22 by subsection (c) shall apply to calendar years
23 beginning after the date of the enactment of
24 this Act.

1 (B) TRANSITION RULE.—In the case of the
2 calendar year which includes the date of the en-
3 actment of this Act, section 6039C of the Inter-
4 nal Revenue Code of 1986 shall be applied by
5 only taking into account interests held during
6 the portion of such calendar year which pre-
7 cedes the date of the enactment of this Act.

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