

118TH CONGRESS
2D SESSION

S. 5188

To amend the Internal Revenue Code of 1986 to incentivize the divestiture of certain securities connected to the People’s Republic of China.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 25, 2024

Mr. RUBIO 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 incentivize the divestiture of certain securities connected to the People’s Republic of China.

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 “Patriotic Investment
5 Act”.

6 **SEC. 2. INCENTIVES TO DIVEST DISQUALIFIED PRC SECURITIES.**
7

8 (a) TREATMENT AS ORDINARY GAIN.—Part IV of
9 subchapter P of chapter 1 of the Internal Revenue Code

1 of 1986 is amended by adding at the end the following
2 new section:

3 **“SEC. 1261. GAIN FROM DISPOSITION OF DISQUALIFIED**
4 **PRC SECURITIES.**

5 “(a) IN GENERAL.—Any gain on the disposition of
6 any disqualified PRC security shall be treated as ordinary
7 income and shall be recognized notwithstanding any other
8 provision of this subtitle.

9 “(b) DEFINITIONS.—For purposes of this section—

10 “(1) DISQUALIFIED PRC SECURITY.—The term
11 ‘disqualified PRC security’ means any specified in-
12 terest held directly or indirectly with respect to any
13 of the following:

14 “(A) The Government of the People’s Re-
15 public of China or any other governmental enti-
16 ty based in the People’s Republic of China.

17 “(B) The Chinese Communist Party or
18 any subdivision or affiliate thereof.

19 “(C) A person who is a citizen, national, or
20 resident of the People’s Republic of China, pro-
21 vided that such person is not an individual who
22 is—

23 “(i) a citizen or lawful permanent
24 resident of the United States, or

1 “(ii) domiciled in Taiwan possessing a
 2 valid identification card or number issued
 3 by the government of Taiwan.

4 “(D) A person (including a legal entity)
 5 headquartered, organized under the laws of, or
 6 having its principal place of business in the
 7 People’s Republic of China.

8 “(E) A person at least 15 percent of the
 9 outstanding voting interest of which is held di-
 10 rectly or indirectly by an entity described in
 11 subparagraphs (A)–(D).

12 “(F) A person at least 25 percent of the
 13 outstanding voting interest of which is held di-
 14 rectly or indirectly by any combination of per-
 15 sons described in subparagraphs (A)–(E).

16 “(2) SPECIFIED INTEREST.—The term ‘speci-
 17 fied interest’—

18 “(A) means, with respect to a person—

19 “(i) stock or any other equity or prof-
 20 its interest of such person,

21 “(ii) debt issued by such person, and

22 “(iii) any contract or derivative with
 23 respect to an interest described in clause
 24 (i) or (ii), and

1 “(B) includes any interest held, directly or
2 indirectly, through—

3 “(i) a regulated investment company,
4 exchange traded fund, or other pooled in-
5 vestment, or

6 “(ii) any derivative financial instru-
7 ment or other contractual arrangement
8 with respect to such interest (including any
9 financial instrument or other contract
10 which seeks to replicate any financial re-
11 turn with respect to such interest).

12 “(3) PEOPLE’S REPUBLIC OF CHINA.—The
13 term ‘People’s Republic of China’ includes Special
14 Administrative Regions, including Hong Kong and
15 Macau, but does not include Taiwan.”.

16 (b) NET PRC SECURITIES GAIN SUBJECT TO HIGH-
17 EST RATE OF INCOME TAX.—

18 (1) INDIVIDUALS.—Section 1 of such Code is
19 amended by adding at the end the following sub-
20 section:

21 “(k) NET PRC SECURITIES GAIN SUBJECT TO
22 HIGHEST RATE OF INCOME TAX.—

23 “(1) IN GENERAL.—The tax imposed under
24 subsections (a), (b), (c), (d), and (e) shall be in-
25 creased by the product of—

1 “(A) the highest rate of tax in effect under
2 such subsection, multiplied by

3 “(B) the net PRC securities gain of the
4 taxpayer for the taxable year.

5 “(2) PREVENTION OF DOUBLE TAXATION.—For
6 purposes of subsections (a), (b), (c), (d) and (e),
7 taxable income (determined without regard to this
8 paragraph) shall be reduced by the net PRC securi-
9 ties gain of the taxpayer for the taxable year.

10 “(3) NET PRC SECURITIES GAIN.—For pur-
11 poses of this subsection, the term ‘net PRC securi-
12 ties gain’ means the excess (if any) of—

13 “(A) the taxpayer’s aggregate gains on the
14 dispositions of disqualified PRC securities for
15 the taxable year, over

16 “(B) the taxpayer’s aggregate losses on the
17 dispositions of disqualified PRC securities for
18 such taxable year.”.

19 “(2) CORPORATIONS.—Section 11(b) of such
20 Code is amended to read as follows:

21 “(b) AMOUNT OF TAX.—The amount of the tax im-
22 posed by subsection (a) shall be the sum of—

23 “(1) 21 percent of the excess (if any) of—

24 “(A) taxable income, over

25 “(B) net PRC securities gain, plus

1 “(2) the product of—

2 “(A) the highest rate of tax in effect under
3 section 1, multiplied by

4 “(B) the lesser of taxable income or net
5 PRC securities gain (as defined in section
6 1(k)(3)).”.

7 (c) CLERICAL AMENDMENT.—The table of sections
8 for part IV of subchapter P of chapter 1 of the Internal
9 Revenue Code of 1986 is amended by adding at the end
10 the following new item:

“Sec. 1261. Gains from disposition of disqualified PRC securities.”.

11 (d) EFFECTIVE DATE.—

12 (1) IN GENERAL.—The amendments made by
13 this section shall apply to dispositions after the date
14 which is 6 months after the date of the enactment
15 of this Act.

16 (2) APPLICATION TO FIRST TAXABLE YEAR.—

17 For purposes of determining net PRC securities gain
18 with respect to any taxable year which includes the
19 date which is 6 months after the date of the enact-
20 ment of this Act, only dispositions of disqualified
21 PRC securities (as defined in section 1261(b)(1) of
22 the Internal Revenue Code of 1986, as amended by
23 this section) after such date shall be taken into ac-
24 count.

1 (e) ELECTION TO PAY TAX LIABILITY ATTRIB-
 2 UTABLE TO DISPOSITIONS MADE IN ANTICIPATION OF IN-
 3 CREASED TAX IN INSTALLMENTS.—

4 (1) IN GENERAL.—In the case of any taxpayer
 5 which has a net PRC tax liability for any taxable
 6 year, such taxpayer may elect to pay such liability
 7 in 3 equal installments.

8 (2) DATE FOR PAYMENT OF INSTALLMENTS.—
 9 If an election is made under paragraph (1), the first
 10 installment shall be paid on the due date (deter-
 11 mined without regard to any extension of time for
 12 filing the return) for the return of tax for the tax-
 13 able year referred to in paragraph (1) and each suc-
 14 ceeding installment shall be paid on the due date (as
 15 so determined) for the return of tax for the taxable
 16 year following the taxable year with respect to which
 17 the preceding installment was made.

18 (3) ACCELERATION OF PAYMENT.—If there is
 19 an addition to tax for failure to timely pay any in-
 20 stallment required under this subsection, a liquida-
 21 tion or sale of substantially all the assets of the tax-
 22 payer (including in a title 11 or similar case), a ces-
 23 sation of business by the taxpayer, or any similar
 24 circumstance, then the unpaid portion of all remain-
 25 ing installments shall be due on the date of such

1 event (or in the case of a title 11 or similar case,
 2 the day before the petition is filed). The preceding
 3 sentence shall not apply to the sale of substantially
 4 all the assets of a taxpayer to a buyer if such buyer
 5 enters into an agreement with the Secretary of the
 6 Treasury (or the Secretary's delegate) under which
 7 such buyer is liable for the remaining installments
 8 due under this subsection in the same manner as if
 9 such buyer were the taxpayer.

10 (4) PRORATION OF DEFICIENCY TO INSTALL-
 11 MENTS.—If an election is made under paragraph (1)
 12 to pay the net PRC tax liability in installments and
 13 a deficiency has been assessed with respect to such
 14 liability, the deficiency shall be prorated to the in-
 15 stallments payable under paragraph (1). The part of
 16 the deficiency so prorated to any installment the
 17 date for payment of which has not arrived shall be
 18 collected at the same time as, and as a part of, such
 19 installment. The part of the deficiency so prorated
 20 to any installment the date for payment of which
 21 has arrived shall be paid upon notice and demand
 22 from the Secretary of the Treasury (or the Sec-
 23 retary's delegate). This subsection shall not apply if
 24 the deficiency is due to negligence, to intentional dis-

1 regard of rules and regulations, or to fraud with in-
 2 tent to evade tax.

3 (5) ELECTION.—Any election under paragraph
 4 (1) shall be made not later than the due date for the
 5 return of tax for the taxable year referred to in
 6 paragraph (1) and shall be made in such manner as
 7 the Secretary of the Treasury (or the Secretary’s
 8 delegate) shall provide.

9 (6) NET PRC TAX LIABILITY.—For purposes of
 10 this subsection—

11 (A) IN GENERAL.—The term “net PRC
 12 tax liability” means, with respect to any tax-
 13 payer for any taxable year, the excess (if any)
 14 of—

15 (i) such taxpayer’s net income tax for
 16 such taxable year, over

17 (ii) such taxpayer’s net income tax for
 18 such taxable year determined without re-
 19 gard to any gains or losses from the dis-
 20 position of disqualified PRC securities (as
 21 defined in section 1261(b)(1) of the Inter-
 22 nal Revenue Code of 1986, as added by
 23 this section) during the 6-month period be-
 24 ginning on the date of the enactment of
 25 this Act.

1 (B) NET INCOME TAX.—The term “net in-
 2 come tax” means the regular tax liability re-
 3 duced by the credits allowed under subparts A,
 4 B, and D of part IV of subchapter A.

5 (7) INSTALLMENTS TREATED AS TAX.—For
 6 purposes of subtitle F of the Internal Revenue Code
 7 of 1986, any installment due under this subsection
 8 shall be treated in the same manner as tax except
 9 as otherwise provided in this subsection.

10 **SEC. 3. DENIAL OF FOREIGN TAX CREDIT FOR INCOME AT-**
 11 **TRIBUTABLE TO DISPOSITION OF DISQUALI-**
 12 **FIED PRC SECURITIES.**

13 (a) IN GENERAL.—Section 901 of the Internal Rev-
 14 enue Code of 1986 is amended by redesignating subsection
 15 (n) as subsection (o) and by inserting after subsection (m)
 16 the following new subsection:

17 “(n) DENIAL OF FOREIGN TAX CREDIT WITH RE-
 18 SPECT TO INCOME ATTRIBUTABLE TO DISPOSITION OF
 19 DISQUALIFIED PRC SECURITIES.—No credit shall be al-
 20 lowed under subsection (a) with respect to any foreign in-
 21 come tax on income attributable to gain from the disposi-
 22 tion of a disqualified PRC security (as defined in section
 23 1261(b)(1)).”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to dispositions after the date which
3 is 6 months after the date of the enactment of this Act.

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