

103^D CONGRESS
1ST SESSION

H. R. 1210

To amend the Internal Revenue Code of 1986 to deny the benefits of the Puerto Rico and possession tax credit in the case of runaway plants.

IN THE HOUSE OF REPRESENTATIVES

MARCH 3, 1993

Mr. STARK (for himself and Mr. ROEMER) 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 deny the benefits of the Puerto Rico and possession tax credit in the case of runaway plants.

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. LIMITATION ON PUERTO RICO AND POSSES-**
4 **SION TAX CREDIT.**

5 (a) GENERAL RULE.—Section 936 of the Internal
6 Revenue Code of 1986 (relating to Puerto Rico and pos-
7 session tax credit) is amended by adding at the end there-
8 of the following new subsection:

9 “(i) DENIAL OF CREDIT FOR INCOME ATTRIB-
10 UTABLE TO RUNAWAY PLANTS.—

1 “(1) IN GENERAL.—

2 “(A) INCOME ATTRIBUTABLE TO SHARE-
3 HOLDERS.—The runaway plant income of a cor-
4 poration electing the application of this section
5 for any taxable year (hereinafter in this sub-
6 section referred to as the ‘electing corporation’)
7 shall be included on a pro rata basis in the
8 gross income of all shareholders of such electing
9 corporation at the close of the taxable year of
10 such electing corporation as income from
11 sources within the United States for the taxable
12 year of such shareholder in which or with which
13 the taxable year of such electing corporation
14 ends.

15 “(B) EXCLUSION FROM THE INCOME OF
16 AN ELECTING CORPORATION.—The taxable in-
17 come of an electing corporation shall be reduced
18 by the amount which is included in the gross
19 income of a shareholder of such corporation by
20 reason of subparagraph (A).

21 “(2) FOREIGN SHAREHOLDERS; SHAREHOLD-
22 ERS NOT SUBJECT TO TAX.—

23 “(A) IN GENERAL.—Paragraph (1)(A)
24 shall not apply with respect to any share-
25 holder—

1 “(i) who is not a United States per-
2 son, or

3 “(ii) who is not subject to tax under
4 this title on runaway plant income which
5 would be allocated to such shareholder (but
6 for this subparagraph).

7 “(B) TREATMENT OF NONALLOCATED
8 RUNAWAY PLANT INCOME.—For purposes of
9 this subtitle, runaway plant income of an elect-
10 ing corporation which is not included in the
11 gross income of a shareholder of such corpora-
12 tion by reason of subparagraph (A) shall be
13 treated as taxable income from sources within
14 the United States.

15 “(3) EXCLUSION OF INCOME FOR QUALIFICA-
16 TION TESTS.—Any gross income taken into account
17 in determining the amount of the runaway plant in-
18 come of any electing corporation shall not be taken
19 into account for purposes of subsection (a)(2).

20 “(4) RUNAWAY PLANT INCOME.—For purposes
21 of this subsection, the term ‘runaway plant income’
22 means the portion of the taxable income of the elect-
23 ing corporation which is attributable to a disquali-
24 fied facility.

1 “(5) DISQUALIFIED FACILITY.—For purposes
2 of this subsection—

3 “(A) IN GENERAL.—The term ‘disqualified
4 facility’ means any facility at which operations
5 are commenced with respect to the electing cor-
6 poration after March 3, 1993 unless—

7 “(i) the Secretary determines that op-
8 erations at such facility—

9 “(I) will not result in a substan-
10 tial adverse effect on the level of em-
11 ployment at any facility in the United
12 States operated by the electing cor-
13 poration or a person related to the
14 electing corporation, and

15 “(II) will not result in such an
16 effect with respect to any other facil-
17 ity in the United States on account of
18 changes in a supplier relationship to
19 the electing corporation or a person
20 related to the electing corporation,
21 and

22 “(ii) the electing corporation files a
23 request with the Secretary for a determina-
24 tion under clause (i) on or before the ear-
25 lier of—

1 “(I) the day 90 days after the
2 date on which an application is sub-
3 mitted to the possession for tax incen-
4 tives for such facility, or

5 “(II) the day 1 year before the
6 date on which operations at such fa-
7 cility commence.

8 The Secretary may treat a request not filed be-
9 fore the time required under clause (ii) as time-
10 ly filed if the Secretary determines that there
11 was reasonable cause for not filing the request
12 before the time required.

13 “(B) CERTAIN REVOCATIONS REQUIRED.—

14 “(i) IN GENERAL.—The Secretary
15 shall revoke a determination under sub-
16 paragraph (A)(i) at any time before the
17 close of the 3-year period beginning on the
18 date on which operations at the facility
19 commenced if the Secretary determines
20 that, on the basis of the facts and cir-
21 cumstances then known, the requirements
22 of subparagraph (A)(i) are not satisfied.

23 “(ii) MISREPRESENTATIONS, ETC.—
24 The Secretary shall, at any time, revoke a
25 determination under subparagraph (A)(i)

1 if, in connection with the request for such
2 determination, there was a misrepresenta-
3 tion with respect to (or a failure to dis-
4 close) any material information by the
5 electing corporation or a related person.

6 “(iii) REVOCATIONS RETROACTIVE.—

7 If any determination is revoked under this
8 subparagraph, this subsection (other than
9 paragraph (8) thereof) shall be applied as
10 if such determination had never been
11 made.

12 “(C) OPPORTUNITY FOR PUBLIC COM-

13 MENT.—No determination may be made under
14 subparagraph (A)(i) unless the Secretary allows
15 an opportunity for public comment on the re-
16 quest for such determination.

17 “(6) EXPANSIONS TREATED AS SEPARATE FA-

18 CILITIES.—

19 “(A) IN GENERAL.—For purposes of this

20 subsection, any substantial increase in employ-
21 ment at a facility shall be treated as a separate
22 facility at which operations are commenced with
23 respect to the electing corporation as of the
24 date of such increase.

1 “(B) SUBSTANTIAL INCREASE IN EMPLOY-
2 MENT.—For purposes of subparagraph (A),
3 there shall be deemed to be a substantial in-
4 crease in employment as of any day at any fa-
5 cility if—

6 “(i) such day is the last day of a pay-
7 roll period and the average number of em-
8 ployees performing services at such facility
9 during such period exceeds 110 percent of
10 the average number of employees perform-
11 ing services at such facility during the cor-
12 responding payroll period in the preceding
13 calendar year, or

14 “(ii) there is an expansion in such fa-
15 cility or the operations at such facility with
16 respect to which a separate or supple-
17 mental application or other request relat-
18 ing to tax incentives for such expansion is
19 made to governmental authorities of the
20 possession.

21 Appropriate adjustments in the application of
22 clause (i) shall be made in the case of employ-
23 ees not performing services on a full-time basis.

24 “(7) SPECIAL RULES.—

1 “(A) DISTRIBUTIONS TO MEET QUALIFICA-
2 TION STANDARDS.—Rules similar to the rules
3 of subsection (h)(4) shall apply for purposes of
4 this subsection.

5 “(B) RELATED PERSON.—For purposes of
6 this subsection, the rules of subparagraphs (D)
7 and (E) of subsection (h)(3) shall apply in de-
8 termining whether any person is related to the
9 electing corporation.

10 “(8) PUBLIC DISCLOSURE.—

11 “(A) PUBLICATION IN FEDERAL REG-
12 ISTER.—The Secretary shall publish in the Fed-
13 eral Register—

14 “(i) a notification of each request for
15 a determination under paragraph (5)(A)(i),
16 and

17 “(ii) a notification of the Secretary’s
18 determination in the case of each such re-
19 quest.

20 “(B) PUBLIC INSPECTION OF DETERMINA-
21 TION.—

22 “(i) IN GENERAL.—Notwithstanding
23 section 6103, the text of any determination
24 made by the Secretary under paragraph
25 (5)(A)(i) and any background file docu-

1 ment relating to such determination shall
2 be open to public inspection at such place
3 as the Secretary may prescribe.

4 “(ii) EXEMPTIONS FROM DISCLO-
5 SURE.—Rules similar to the rules of sec-
6 tion 6110(c) (other than paragraph (1)
7 thereof) shall apply for purposes of clause
8 (i).

9 “(iii) BACKGROUND FILE DOCU-
10 MENT.—For purposes of this subpara-
11 graph, the term ‘background file docu-
12 ment’ has the meaning given such term by
13 section 6110(b)(2) determined by treating
14 the determination under paragraph (2) as
15 a written determination.”

16 (b) EFFECTIVE DATE.—

17 (1) IN GENERAL.—The amendment made by
18 subsection (a) shall apply to taxable years ending
19 after March 3, 1993.

20 (2) TIME FOR FILING REQUEST.—The time for
21 filing a request under section 936(i)(5)(A)(ii) shall
22 in no event expire before the date 90 days after the
23 date of the enactment of this Act.

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