

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3610

To amend the Internal Revenue Code of 1986 to provide that distributions from a controlled foreign corporation to a United States shareholder shall be excluded from gross income if at least a portion of the distribution is invested in certain property located in the United States and in the employment of new employees in the United States.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 21, 1993

Ms. SLAUGHTER introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to provide that distributions from a controlled foreign corporation to a United States shareholder shall be excluded from gross income if at least a portion of the distribution is invested in certain property located in the United States and in the employment of new employees in the United States.

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. EXCLUSION FROM GROSS INCOME FOR DIS-**  
2 **TRIBUTIONS FROM CONTROLLED FOREIGN**  
3 **CORPORATIONS WHICH ARE INVESTED IN**  
4 **CERTAIN PROPERTY LOCATED IN THE UNIT-**  
5 **ED STATES OR USED TO HIRE NEW EMPLOY-**  
6 **EES IN THE UNITED STATES.**

7 (a) IN GENERAL.—Part III of subchapter B of chap-  
8 ter 1 of the Internal Revenue Code of 1986 (relating to  
9 items specifically excluded from gross income) is amended  
10 by redesignating section 137 as section 138 and by insert-  
11 ing after section 136 the following new section:

12 **“SEC. 137. DISTRIBUTIONS FROM CONTROLLED FOREIGN**  
13 **CORPORATIONS WHICH ARE INVESTED IN**  
14 **CERTAIN UNITED STATES PROPERTY OR**  
15 **WHICH ARE USED TO HIRE NEW EMPLOYEES**  
16 **IN THE UNITED STATES.**

17 “(a) EXCLUSION.—The gross income of a United  
18 States shareholder of a controlled foreign corporation shall  
19 not include the amount of any qualified distribution re-  
20 ceived during the taxable year by such shareholder from  
21 such corporation.

22 “(b) REINVESTMENT REQUIREMENTS.—

23 “(1) IN GENERAL.—If, as of the close of the re-  
24 investment period with respect to any distribution,  
25 the taxpayer fails to meet—

1           “(A) the investment in property require-  
2           ment of subsection (c), or

3           “(B) the job creation requirement of sub-  
4           section (d),

5           then the taxpayer’s tax imposed by this chapter for  
6           the taxable year in which such reinvestment period  
7           ends shall be increased by an amount equal to the  
8           recapture amount with respect to such distribution.

9           “(2) RECAPTURE AMOUNT.—For purposes of  
10          paragraph (1), the term ‘recapture amount’ means  
11          an amount equal to the sum of—

12                 “(A) the shortfall percentage of the reduc-  
13                 tion in the taxpayer’s liability for tax under this  
14                 chapter which resulted from excluding such dis-  
15                 tribution from gross income under subsection  
16                 (a), plus

17                 “(B) the aggregate amount of interest (de-  
18                 termined in the manner provided in subsection  
19                 (e)(4)) on the amount determined under sub-  
20                 paragraph (A).

21          “(3) SHORTFALL PERCENTAGE.—For purposes  
22          of paragraph (2), the term ‘shortfall percentage’  
23          means the greater of—

24                 “(A) the investment in property shortfall  
25                 percentage, or

1 “(B) the job creation shortfall percentage.

2 “(4) INVESTMENT IN PROPERTY SHORTFALL  
3 PERCENTAGE.—For purposes of paragraph (3), the  
4 term ‘investment in property shortfall percentage’  
5 means the percentage which—

6 “(A) the excess (if any) of—

7 “(i) an amount equal to 50 percent of  
8 the distribution involved, over

9 “(ii) the amount of qualified invest-  
10 ment made during the reinvestment period  
11 which allocable to such distribution, bears  
12 to

13 “(B) the amount described in subpara-  
14 graph (A)(i).

15 “(5) JOB CREATION SHORTFALL PERCENT-  
16 AGE.—For purposes of paragraph (3), the term ‘job  
17 creation shortfall percentage’ means the percentage  
18 which—

19 “(A) the excess (if any) of—

20 “(i) an amount equal to 12.5 percent  
21 of the distribution involved, over

22 “(ii) the amount of new employee  
23 wages paid during the last taxable year of  
24 the reinvestment period allocable to such  
25 distribution, bears to

1           “(B) the amount described in subpara-  
2           graph (A)(i).

3           “(c) INVESTMENT IN PROPERTY REQUIREMENT.—  
4 For purposes of this section—

5           “(1) REQUIREMENT.—A taxpayer meets the in-  
6           vestment in property requirement of this subsection  
7           if the qualified investment of the taxpayer during  
8           the reinvestment period (to the extent not taken into  
9           account under this paragraph with respect to any  
10          prior distribution) is not less than 50 percent of the  
11          amount of the distribution.

12          “(2) QUALIFIED INVESTMENT.—The term  
13          ‘qualified investment’ means the sum of—

14                 “(A) the aggregate bases of new qualified  
15                 property placed in service by the taxpayer, and

16                 “(B) the aggregate cost of used qualified  
17                 property placed in service by the taxpayer.

18          Rules similar to the rules of subsections (b) and (c)  
19          of section 48 (as in effect on the day before the date  
20          of the enactment of the Revenue Reconciliation Act  
21          of 1990) shall apply for purposes of this paragraph.

22          “(3) QUALIFIED PROPERTY.—For purposes of  
23          paragraph (2), the term ‘qualified property’  
24          means—

1           “(A) section 38 property (as defined by  
2           section 48(a) as in effect on the day before the  
3           date of the enactment of the Omnibus Budget  
4           Reconciliation Act of 1990), and

5           “(B) real property (not described in sub-  
6           paragraph (A)) used as an integral part of  
7           manufacturing facility (as defined in section  
8           144(a)(12)(C)).

9           The term ‘qualified property’ shall not include any  
10          property if the taxpayer is the lessor of the property.

11          “(4) RECAPTURE IF PROPERTY DISPOSED OF,  
12          ETC.—

13                 “(A) IN GENERAL.—If any qualified prop-  
14                 erty is disposed of, or otherwise ceases to be  
15                 qualified property with respect to the taxpayer,  
16                 before the close of the recapture period, then  
17                 the taxpayer’s tax imposed by this chapter for  
18                 the taxable year in which such disposition or  
19                 cessation occurs shall be increased by the sum  
20                 of—

21                         “(i) the recapture percentage of such  
22                         property’s share of the tax benefit under  
23                         this section, plus

24                         “(ii) the aggregate amount of interest  
25                         (determined in the manner provided in

1 subsection (e)(4)) on the amount deter-  
2 mined under subparagraph (A).

3 “(B) DEFINITIONS.—For purposes of this  
4 paragraph—

5 “(i) RECAPTURE PERIOD.—The term  
6 ‘recapture period’ means, with respect to  
7 any property, the period consisting of the  
8 first full year after the property is placed  
9 in service and—

10 “(I) the 2 succeeding full years  
11 in the case of 3-year property (within  
12 the meaning of section 168),

13 “(II) the 4 succeeding full years  
14 in the case of section 38 property  
15 other than 3-year property, and

16 “(III) the 9 succeeding full years  
17 in the case of property referred to in  
18 paragraph (2)(B).

19 “(ii) RECAPTURE PERCENTAGE.—The  
20 term ‘recapture percentage’ means the per-  
21 centage determined under section  
22 50(a)(1)(B); except that—

23 “(I) in the case of 3-year prop-  
24 erty, the percentage set forth in  
25 clause (ii) of the table contained in

1 paragraph (1)(B) shall be 66 percent,  
2 the percentage set forth in clause (iii)  
3 of such table shall be 33 percent, and  
4 clauses (iv) and (v) of such table shall  
5 not apply, and

6 “(II) in the case of property re-  
7 ferred to in paragraph (2)(B), the  
8 percentage shall be 100 percent for  
9 the first full year of the recapture pe-  
10 riod and, for each full year thereafter,  
11 shall be 10 percentage points less  
12 than the recapture percentage for the  
13 prior year.

14 “(C) PROPERTY’S SHARE OF TAX BENE-  
15 FIT.—A property’s share of the tax benefit  
16 under this section shall be—

17 “(i) an amount which bears the same  
18 ratio to the reduction in the taxpayer’s li-  
19 ability for tax under this chapter which re-  
20 sulted from excluding the distribution in-  
21 volved from gross income under subsection  
22 (a), as

23 “(ii) the unadjusted basis of such  
24 property bears to the aggregate unadjusted  
25 bases of all qualified property placed in

1 service during the reinvestment period with  
2 respect to such distribution.

3 “(d) JOB CREATION REQUIREMENT.—For purposes  
4 of this section—

5 “(1) REQUIREMENT.—A taxpayer meets the job  
6 creation requirement of this subsection if the new  
7 employee wages paid by the taxpayer during the last  
8 taxable year of the reinvestment period (to the ex-  
9 tent not taken into account under this paragraph  
10 with respect to any prior distribution) is not less  
11 than 12.5 percent of the amount of the distribution.

12 “(2) NEW EMPLOYEE WAGES.—The term ‘new  
13 employee wages’ means, with respect to any distribu-  
14 tion, wages paid to employees—

15 “(A) who are first hired after the date of  
16 such distribution, and

17 “(B) whose employment represents an in-  
18 crease in the aggregate number of employees of  
19 the taxpayer in the United States.

20 “(3) WAGES.—The term ‘wages’ has the same  
21 meaning as when used in section 51.

22 “(4) INCREASED EMPLOYMENT MUST BE MAIN-  
23 TAINED FOR 4 YEARS.—

24 “(A) IN GENERAL.—If for any taxable year  
25 in the employment maintenance period (here-

1 after in this paragraph referred to as the ‘rede-  
2 termination year’) the new employee wages with  
3 respect to any distribution are less than the  
4 new employee wages for the last taxable year of  
5 the reinvestment period with respect to such  
6 distribution, the taxpayer’s tax imposed by this  
7 chapter for the redetermination year shall be  
8 increased by an amount equal to the adjusted  
9 recapture amount with respect to such distribu-  
10 tion.

11 “(B) ADJUSTED RECAPTURE AMOUNT.—

12 For purposes of subparagraph (A), the term  
13 ‘adjusted recapture amount’ means an amount  
14 equal to the sum of—

15 “(A) the excess (if any) of—

16 “(i) the job creation shortfall percent-  
17 age of the reduction in the taxpayer’s li-  
18 ability for tax under this chapter which re-  
19 sulted from excluding such distribution  
20 from gross income under subsection (a)  
21 (determined for the redetermination year),  
22 over

23 “(ii) the amount determined under  
24 subsection (b)(2)(A) (increased by any

1 prior increase in tax under this paragraph  
2 with respect to such distribution), plus

3 “(B) the aggregate amount of interest (de-  
4 termined in the manner provided in subsection  
5 (e)(4)) on the excess determined under subpara-  
6 graph (A).

7 “(C) EMPLOYMENT MAINTENANCE PE-  
8 RIOD.—For purposes of this paragraph, the  
9 term ‘employment maintenance period’ means  
10 any period of 4 consecutive taxable years se-  
11 lected by the taxpayer so long as at least 1 of  
12 such taxable years is during the reinvestment  
13 period.

14 “(e) OTHER DEFINITIONS AND SPECIAL RULES.—  
15 For purposes of this section—

16 “(1) QUALIFIED DISTRIBUTION.—The term  
17 ‘qualified distribution’ means any distribution to the  
18 extent that the amount thereof reduces the amount  
19 includible in gross income under section 956A (relat-  
20 ing to earnings invested in excess passive assets).

21 “(2) REINVESTMENT PERIOD.—The term ‘rein-  
22 vestment period’ means, with respect to any dis-  
23 tribution received during a taxable year, such tax-  
24 able year and the 4 succeeding taxable years.

1           “(3) UNITED STATES SHAREHOLDER; CON-  
2 TROLLED FOREIGN CORPORATION.—The terms  
3 ‘United States shareholder’ and ‘controlled foreign  
4 corporation’ have the respective meanings given such  
5 terms by sections 951 and 957.

6           “(4) RULES RELATING TO DETERMINATION OF  
7 INTEREST.—

8           “(A) IN GENERAL.—The amount of inter-  
9 est referred to in subsections (b)(2), (c)(4), and  
10 (d)(3) for any taxable year shall be determined  
11 for the period—

12                   “(i) beginning on the due date for  
13 taxable year during which the distribution  
14 involved was made, and

15                   “(ii) ending on the due date for the  
16 taxable year for which the increase in tax  
17 is being determined,

18 by using the rates and method applicable under  
19 section 6621 for underpayment of tax for such  
20 period.

21           “(B) DUE DATE.—For purposes of sub-  
22 paragraph (A), the term ‘due date’ means the  
23 date prescribed by law (determined without re-  
24 gard to extensions) for filing the return of the

1 tax imposed by this chapter for the taxable  
2 year.

3 “(C) TREATMENT OF INCREASE IN TAX  
4 ATTRIBUTABLE TO INTEREST AS INTEREST.—  
5 Any increase in tax imposed by this chapter for  
6 a taxable year by reason of this section to the  
7 extent attributable to an amount referred to in  
8 subsection (b)(2)(B), (c)(4)(A)(ii), or (d)(3)(B)  
9 shall be treated as interest paid under section  
10 6601 on the due date for such taxable year.

11 “(5) CONTROLLED GROUPS.—All taxpayers  
12 treated as a single employer under subsection (a) or  
13 (b) of section 52 shall be treated as a single  
14 taxpayer.

15 “(f) BASIS ADJUSTMENT.—

16 “(1) IN GENERAL.—For purposes of this sub-  
17 title, the basis of any qualified property placed in  
18 service during any taxable year for which an amount  
19 was excluded from gross income under this section  
20 shall be reduced by an amount equal to such prop-  
21 erty’s share of such exclusion (determined under  
22 subsection (c)(3)).

23 “(2) CERTAIN DISPOSITIONS.—If there is an in-  
24 crease in tax by reason of this section for any tax-  
25 able year, proper adjustments shall be made under

1 regulations prescribed by the Secretary with respect  
2 to any property the basis of which was reduced  
3 under paragraph (1).”

4 (b) TECHNICAL AMENDMENT.—Subsection (a) of  
5 section 1016 of such Code is amended by striking “and”  
6 at the end of paragraph (24), by striking the period at  
7 the end of paragraph (25) and inserting “, and”, and by  
8 adding at the end thereof the following new paragraph:

9 “(26) to the extent provided in section 137(f).”

10 (c) CLERICAL AMENDMENT.—The table of sections  
11 for part III of subchapter B of chapter 1 of such Code  
12 is amended by striking the last item and inserting the  
13 following new items:

“Sec. 137. Distributions from controlled foreign corporations  
which are invested in certain United States prop-  
erty or which are used to hire new employees in the  
United States.

“Sec. 138. Cross references to other Acts.”

14 (d) EFFECTIVE DATE.—The amendments made by  
15 this section shall apply to distributions received after the  
16 date of the enactment of this Act in taxable years ending  
17 after such date.

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