

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3933

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

MARCH 1, 1994

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 distribution received during  
20 the taxable year by such shareholder from such corpora-  
21 tion.

22 “(b) MAXIMUM EXCLUSION.—

23 “(1) IN GENERAL.—The amount distributed  
24 from a controlled foreign corporation which is ex-  
25 cluded from a shareholder’s gross income under sub-

1 section (a) for any taxable year shall not exceed the  
2 excess (if any) of—

3 “(A) the amount equal to such sharehold-  
4 er’s ownership percentage of the excess passive  
5 assets of such corporation for its base year,  
6 over

7 “(B) the aggregate amount distributed  
8 from such corporation which was excluded from  
9 such shareholder’s gross income under sub-  
10 section (a) for all prior taxable years of such  
11 shareholder ending on or after the close of the  
12 base year of such corporation.

13 “(2) SHAREHOLDER’S OWNERSHIP PERCENT-  
14 AGE.—For purposes of paragraph (1), a sharehold-  
15 er’s ownership percentage is the percentage of the  
16 total combined voting power of all classes of stock  
17 entitled to vote in the controlled foreign corporation  
18 which the shareholder owns (within the meaning of  
19 section 958(a)) or is considered as owning under  
20 section 958(b). Such percentage shall be determined  
21 as of the close of the base year.

22 “(3) BASE YEAR.—For purposes of this sub-  
23 section, the base year is the controlled foreign cor-  
24 poration’s first taxable year ending after December  
25 31, 1992.

1           “(4) LOWER LIMITATION IF REDUCTION IN EX-  
2           CESS PASSIVE ASSETS.—If, for any taxable year of  
3           the corporation after the base year, the excess pas-  
4           sive assets of such corporation are less than such ex-  
5           cess passive assets for the base year, then, for pur-  
6           poses of applying this subsection to any taxable year  
7           of a United States shareholder ending after the close  
8           of such taxable year of the corporation, the limita-  
9           tion under paragraph (1) shall be the lesser of—

10                   “(A) such limitation (determined without  
11                   regard to this paragraph), or

12                   “(B) such limitation determined as if such  
13                   taxable year of the corporation were the base  
14                   year of such corporation.

15           “(5) EXCESS PASSIVE ASSETS.—For purposes  
16           of this subsection, the term ‘excess passive assets’  
17           has the meaning given such term by section  
18           956A(c).

19           “(6) PREDECESSORS.—Under regulations pre-  
20           scribed by the Secretary, to the extent necessary to  
21           carry out the purposes of this subsection, any ref-  
22           erence to a shareholder shall be treated as including  
23           a reference to any predecessor of such shareholder  
24           and to any person from whom such shareholder ac-

1       quired any portion of such shareholder's stock in  
2       such corporation.

3       “(c) REINVESTMENT REQUIREMENTS.—

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

7                       “(A) the investment in property require-  
8                       ment of subsection (d), or

9                       “(B) the job creation requirement of sub-  
10                      section (e),

11       then the taxpayer's tax imposed by this chapter for  
12       the taxable year in which such reinvestment period  
13       ends shall be increased by an amount equal to the  
14       recapture amount with respect to such distribution.

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

18                       “(A) the shortfall percentage of the reduc-  
19                       tion in the taxpayer's liability for tax under this  
20                       chapter which resulted from excluding such dis-  
21                       tribution from gross income under subsection  
22                       (a), plus

23                       “(B) the aggregate amount of interest (de-  
24                       termined in the manner provided in subsection

1 (f)(3)) on the amount determined under sub-  
2 paragraph (A).

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

6 “(A) the investment in property shortfall  
7 percentage, or

8 “(B) the job creation shortfall percentage.

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

13 “(A) the excess (if any) of—

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

16 “(ii) the amount of qualified invest-  
17 ment made during the reinvestment period  
18 which allocable to such distribution, bears  
19 to

20 “(B) the amount described in subpara-  
21 graph (A)(i).

22 “(5) JOB CREATION SHORTFALL PERCENT-  
23 AGE.—For purposes of paragraph (3), the term ‘job  
24 creation shortfall percentage’ means the percentage  
25 which—

1 “(A) the excess (if any) of—

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

4 “(ii) the amount of new employee  
5 wages paid during the last taxable year of  
6 the reinvestment period allocable to such  
7 distribution, bears to

8 “(B) the amount described in subpara-  
9 graph (A)(i).

10 “(d) INVESTMENT IN PROPERTY REQUIREMENT.—

11 For purposes of this section—

12 “(1) REQUIREMENT.—A taxpayer meets the in-  
13 vestment in property requirement of this subsection  
14 if the qualified investment of the taxpayer during  
15 the reinvestment period (to the extent not taken into  
16 account under this paragraph with respect to any  
17 prior distribution) is not less than 50 percent of the  
18 amount of the distribution.

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

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

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

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

5 “(3) QUALIFIED PROPERTY.—For purposes of  
6 paragraph (2), the term ‘qualified property’  
7 means—

8 “(A) section 38 property (as defined by  
9 section 48(a) as in effect on the day before the  
10 date of the enactment of the Omnibus Budget  
11 Reconciliation Act of 1990), and

12 “(B) real property (not described in sub-  
13 paragraph (A)) used as an integral part of  
14 manufacturing facility (as defined in section  
15 144(a)(12)(C)).

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

18 “(4) RECAPTURE IF PROPERTY DISPOSED OF,  
19 ETC.—

20 “(A) IN GENERAL.—If any qualified prop-  
21 erty is disposed of, or otherwise ceases to be  
22 qualified property with respect to the taxpayer,  
23 before the close of the recapture period, then  
24 the taxpayer’s tax imposed by this chapter for  
25 the taxable year in which such disposition or

1 cessation occurs shall be increased by the sum  
2 of—

3 “(i) the recapture percentage of such  
4 property’s share of the tax benefit under  
5 this section, plus

6 “(ii) the aggregate amount of interest  
7 (determined in the manner provided in  
8 subsection (f)(3)) on the amount deter-  
9 mined under subparagraph (A).

10 “(B) DEFINITIONS.—For purposes of this  
11 paragraph—

12 “(i) RECAPTURE PERIOD.—The term  
13 ‘recapture period’ means, with respect to  
14 any property, the period consisting of the  
15 first full year after the property is placed  
16 in service and—

17 “(I) the 2 succeeding full years  
18 in the case of 3-year property (within  
19 the meaning of section 168),

20 “(II) the 4 succeeding full years  
21 in the case of section 38 property  
22 other than 3-year property, and

23 “(III) the 9 succeeding full years  
24 in the case of property referred to in  
25 paragraph (2)(B).

1           “(ii) RECAPTURE PERCENTAGE.—The  
2           term ‘recapture percentage’ means the per-  
3           centage determined under section  
4           50(a)(1)(B); except that—

5                   “(I) in the case of 3-year prop-  
6                   erty, the percentage set forth in  
7                   clause (ii) of the table contained in  
8                   paragraph (1)(B) shall be 66 percent,  
9                   the percentage set forth in clause (iii)  
10                  of such table shall be 33 percent, and  
11                  clauses (iv) and (v) of such table shall  
12                  not apply, and

13                   “(II) in the case of property re-  
14                   ferred to in paragraph (2)(B), the  
15                   percentage shall be 100 percent for  
16                   the first full year of the recapture pe-  
17                   riod and, for each full year thereafter,  
18                   shall be 10 percentage points less  
19                   than the recapture percentage for the  
20                   prior year.

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

24                   “(i) an amount which bears the same  
25                   ratio to the reduction in the taxpayer’s li-

1 ability for tax under this chapter which re-  
2 sulted from excluding the distribution in-  
3 volved from gross income under subsection  
4 (a), as

5 “(ii) the unadjusted basis of such  
6 property bears to the aggregate unadjusted  
7 bases of all qualified property placed in  
8 service during the reinvestment period with  
9 respect to such distribution.

10 “(e) JOB CREATION REQUIREMENT.—For purposes  
11 of this section—

12 “(1) REQUIREMENT.—A taxpayer meets the job  
13 creation requirement of this subsection if the new  
14 employee wages paid by the taxpayer during the last  
15 taxable year of the reinvestment period (to the ex-  
16 tent not taken into account under this paragraph  
17 with respect to any prior distribution) is not less  
18 than 12.5 percent of the amount of the distribution.

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

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

1           “(B) whose employment represents an in-  
2           crease in the aggregate number of employees of  
3           the taxpayer in the United States.

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

6           “(4) INCREASED EMPLOYMENT MUST BE MAIN-  
7           TAINED FOR 4 YEARS.—

8           “(A) IN GENERAL.—If for any taxable year  
9           in the employment maintenance period (here-  
10          after in this paragraph referred to as the ‘rede-  
11          termination year’) the new employee wages with  
12          respect to any distribution are less than the  
13          new employee wages for the last taxable year of  
14          the reinvestment period with respect to such  
15          distribution, the taxpayer’s tax imposed by this  
16          chapter for the redetermination year shall be  
17          increased by an amount equal to the adjusted  
18          recapture amount with respect to such distribu-  
19          tion.

20          “(B) ADJUSTED RECAPTURE AMOUNT.—  
21          For purposes of subparagraph (A), the term  
22          ‘adjusted recapture amount’ means an amount  
23          equal to the sum of—

24                   “(i) the excess (if any) of—

1           “(I) the job creation shortfall  
2           percentage of the reduction in the tax-  
3           payer’s liability for tax under this  
4           chapter which resulted from excluding  
5           such distribution from gross income  
6           under subsection (a) (determined for  
7           the redetermination year), over

8           “(II) the amount determined  
9           under subsection (c)(2)(A) (increased  
10          by any prior increase in tax under this  
11          paragraph with respect to such dis-  
12          tribution), plus

13          “(ii) the aggregate amount of interest  
14          (determined in the manner provided in  
15          subsection (f)(3)) on the excess determined  
16          under clause (i).

17          “(C) EMPLOYMENT MAINTENANCE PE-  
18          RIOD.—For purposes of this paragraph, the  
19          term ‘employment maintenance period’ means  
20          any period of 4 consecutive taxable years se-  
21          lected by the taxpayer so long as at least 1 of  
22          such taxable years is during the reinvestment  
23          period.

24          “(f) OTHER DEFINITIONS AND SPECIAL RULES.—  
25          For purposes of this section—

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

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

10           “(3) RULES RELATING TO DETERMINATION OF  
11           INTEREST.—

12           “(A) IN GENERAL.—The amount of inter-  
13           est referred to in subsections (c)(2), (d)(4), and  
14           (e)(3) for any taxable year shall be determined  
15           for the period—

16           “(i) beginning on the due date for  
17           taxable year during which the distribution  
18           involved was made, and

19           “(ii) ending on the due date for the  
20           taxable year for which the increase in tax  
21           is being determined,

22           by using the rates and method applicable under  
23           section 6621 for underpayment of tax for such  
24           period.

1           “(B) DUE DATE.—For purposes of sub-  
2 paragraph (A), the term ‘due date’ means the  
3 date prescribed by law (determined without re-  
4 gard to extensions) for filing the return of the  
5 tax imposed by this chapter for the taxable  
6 year.

7           “(C) TREATMENT OF INCREASE IN TAX  
8 ATTRIBUTABLE TO INTEREST AS INTEREST.—  
9 Any increase in tax imposed by this chapter for  
10 a taxable year by reason of this section to the  
11 extent attributable to an amount referred to in  
12 subsection (c)(2)(B), (d)(4)(A)(ii), or (e)(3)(B)  
13 shall be treated as interest paid under section  
14 6601 on the due date for such taxable year.

15           “(4) CONTROLLED GROUPS.—All taxpayers  
16 treated as a single employer under subsection (a) or  
17 (b) of section 52 shall be treated as a single tax-  
18 payer.

19           “(g) BASIS ADJUSTMENT.—

20           “(1) IN GENERAL.—For purposes of this sub-  
21 title, the basis of any qualified property placed in  
22 service during any taxable year for which an amount  
23 was excluded from gross income under this section  
24 shall be reduced by an amount equal to such prop-

1 erty's share of such exclusion (determined under  
2 subsection (d)(4)).

3 “(2) CERTAIN DISPOSITIONS.—If there is an in-  
4 crease in tax by reason of this section for any tax-  
5 able year, proper adjustments shall be made under  
6 regulations prescribed by the Secretary with respect  
7 to any property the basis of which was reduced  
8 under paragraph (1).”

9 (b) TECHNICAL AMENDMENT.—Subsection (a) of  
10 section 1016 of such Code is amended by striking “and”  
11 at the end of paragraph (24), by striking the period at  
12 the end of paragraph (25) and inserting “, and”, and by  
13 adding at the end thereof the following new paragraph:

14 “(26) to the extent provided in section 137(g).”

15 (c) CLERICAL AMENDMENT.—The table of sections  
16 for part III of subchapter B of chapter 1 of such Code  
17 is amended by striking the last item and inserting the fol-  
18 lowing 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.”

19 (d) EFFECTIVE DATE.—The amendments made by  
20 this section shall apply to distributions received after the  
21 date of the enactment of this Act in taxable years ending  
22 after such date.



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