

103^D CONGRESS
2^D SESSION

S. 2342

To amend the Internal Revenue Code of 1986 to improve the collection of taxes of United States persons moving production abroad and foreign persons doing business in the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 29 (legislative day, JULY 20), 1994

Mr. DORGAN (for himself, Mr. DASCHLE, Mr. SIMON, Mr. CONRAD, Mr. FEINGOLD, Mr. REID, Mr. WELLSTONE, and Mr. LEVIN) 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 improve the collection of taxes of United States persons moving production abroad and foreign persons doing business in the United States, and for other purposes.

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 “Foreign Tax Compli-
5 ance Act of 1994”.

1 **SEC. 2. TAXATION OF INCOME OF CONTROLLED FOREIGN**
 2 **CORPORATIONS ATTRIBUTABLE TO IM-**
 3 **PORTED PROPERTY.**

4 (a) GENERAL RULE.—Subsection (a) of section 954
 5 of the Internal Revenue Code of 1986 (defining foreign
 6 base company income) is amended by striking “and” at
 7 the end of paragraph (4), by striking the period at the
 8 end of paragraph (5) and inserting “, and”, and by adding
 9 at the end the following new paragraph:

10 “(6) imported property income for the taxable
 11 year (determined under subsection (h) and reduced
 12 as provided in subsection (b)(5)).”

13 (b) DEFINITION OF IMPORTED PROPERTY IN-
 14 COME.—Section 954 of the Internal Revenue Code of 1986
 15 is amended by adding at the end the following new sub-
 16 section:

17 “(h) IMPORTED PROPERTY INCOME.—

18 “(1) IN GENERAL.—For purposes of subsection
 19 (a)(6), the term ‘imported property income’ means
 20 income (whether in the form of profits, commissions,
 21 fees, or otherwise) derived in connection with—

22 “(A) manufacturing, producing, growing,
 23 or extracting imported property,

24 “(B) the sale, exchange, or other disposi-
 25 tion of imported property, or

1 “(C) the lease, rental, or licensing of im-
2 ported property.

3 Such term shall not include any foreign oil and gas
4 extraction income (within the meaning of section
5 907(c)) or any foreign oil related income (within the
6 meaning of section 907(c)).

7 “(2) IMPORTED PROPERTY.—For purposes of
8 this subsection—

9 “(A) IN GENERAL.—Except as otherwise
10 provided in this paragraph, the term ‘imported
11 property’ means property which is imported
12 into the United States by the controlled foreign
13 corporation or a related person.

14 “(B) IMPORTED PROPERTY INCLUDES CER-
15 TAIN PROPERTY IMPORTED BY UNRELATED
16 PERSONS.—The term ‘imported property’ in-
17 cludes any property imported into the United
18 States by an unrelated person if, when such
19 property was sold to the unrelated person by
20 the controlled foreign corporation (or a related
21 person), it was reasonable to expect that—

22 “(i) such property would be imported
23 into the United States, or

1 “(ii) such property would be used as
2 a component in other property which would
3 be imported into the United States.

4 “(C) EXCEPTION FOR PROPERTY SUBSE-
5 QUENTLY EXPORTED.—The term ‘imported
6 property’ does not include any property which is
7 imported into the United States and which—

8 “(i) before substantial use in the
9 United States, is sold, leased, or rented by
10 the controlled foreign corporation or a re-
11 lated person for direct use, consumption,
12 or disposition outside the United States, or

13 “(ii) is used by the controlled foreign
14 corporation or a related person as a com-
15 ponent in other property which is so sold,
16 leased, or rented.

17 “(3) DEFINITIONS AND SPECIAL RULES.—

18 “(A) IMPORT.—For purposes of this sub-
19 section, the term ‘import’ means entering, or
20 withdrawal from warehouse, for consumption or
21 use. Such term includes any grant of the right
22 to use an intangible (as defined in section
23 936(b)(3)(B)) in the United States.

24 “(B) UNRELATED PERSON.—For purposes
25 of this subsection, the term ‘unrelated person’

1 means any person who is not a related person
2 with respect to the controlled foreign corpora-
3 tion.

4 “(C) COORDINATION WITH FOREIGN BASE
5 COMPANY SALES INCOME.—For purposes of this
6 section, the term ‘foreign base company sales
7 income’ shall not include any imported property
8 income.”.

9 (c) SEPARATE APPLICATION OF LIMITATIONS ON
10 FOREIGN TAX CREDIT FOR IMPORTED PROPERTY IN-
11 COME.—

12 (1) IN GENERAL.—Paragraph (1) of section
13 904(d) of the Internal Revenue Code of 1986 (relat-
14 ing to separate application of section with respect to
15 certain categories of income) is amended by striking
16 “and” at the end of subparagraph (H), by redesignig-
17 nating subparagraph (I) as subparagraph (J), and
18 by inserting after subparagraph (H) the following
19 new subparagraph:

20 “(I) imported property income, and”.

21 (2) IMPORTED PROPERTY INCOME DEFINED.—
22 Paragraph (2) of section 904(d) of such Code is
23 amended by redesignating subparagraphs (H) and
24 (I) as subparagraphs (I) and (J), respectively, and

1 by inserting after subparagraph (G) the following
2 new subparagraph:

3 “(H) IMPORTED PROPERTY INCOME.—The
4 term ‘imported property income’ means any in-
5 come received or accrued by any person which
6 is of a kind which would be imported property
7 income (as defined in section 954(h)).”

8 (3) LOOK-THRU RULES TO APPLY.—Clause (i)
9 of section 904(d)(3)(F) of such Code is amended by
10 striking “or (E)” and inserting “(E), or (H)”.

11 (d) TECHNICAL AMENDMENTS.—

12 (1) Clause (iii) of section 952(c)(1)(B) of the
13 Internal Revenue Code of 1986 (relating to certain
14 prior year deficits may be taken into account) is
15 amended by inserting the following subclause after
16 subclause (II) (and by redesignating the following
17 subclauses accordingly):

18 “(III) imported property income,”.

19 (2) Paragraph (5) of section 954(b) of such
20 Code (relating to deductions to be taken into ac-
21 count) is amended by striking “and the foreign base
22 company oil related income” and inserting “the for-
23 eign base company oil related income, and the im-
24 ported property income”.

25 (e) EFFECTIVE DATE.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), the amendments made by this section
3 shall apply to taxable years of foreign corporations
4 beginning after December 31, 1994, and to taxable
5 years of United States shareholders within which or
6 with which such taxable years of such foreign cor-
7 porations end.

8 (2) SUBSECTION (c).—The amendments made
9 by subsection (c) shall apply to taxable years begin-
10 ning after December 31, 1994.

11 **SEC. 3. IMPROVEMENTS IN THE COLLECTION OF UNITED**
12 **STATES TAXES OWED BY FOREIGN PERSONS.**

13 (a) FINDINGS.—The Congress finds that—

14 (1) there is evidence suggesting that foreign-
15 controlled corporations doing business in the United
16 States do not pay their fair share of taxes;

17 (2) over 70 percent of foreign-controlled cor-
18 porations doing business in the United States pay no
19 Federal income tax;

20 (3) the United States Department of the Treas-
21 ury has limited its ability to protect the revenue base
22 in the case of cross-border transactions, to the det-
23 riment of taxpayers engaged solely in domestic
24 transactions;

1 (4) the United States Department of the Treas-
2 ury has been using antiquated accounting concepts
3 to deal with sophisticated multinational corporations;

4 (5) substantial Federal revenues are lost annu-
5 ally due to the inability of the Internal Revenue
6 Service to enforce the “arm’s length” transaction
7 rules, along with substantial amounts spent on ad-
8 ministration and litigation;

9 (6) current procedures of the Internal Revenue
10 Service are insufficient for ensuring that a foreigner
11 who is not a resident of a foreign country does not
12 take advantage of the treaty benefits of that coun-
13 try; and

14 (7) current regulations and other positions
15 adopted by the Internal Revenue Service may permit
16 foreign persons to avoid United States taxes by uti-
17 lizing derivative financial products which replicate
18 the economic features of United States taxable in-
19 vestments.

20 (b) SENSE OF THE CONGRESS.—It is the sense of
21 the Congress that deficit reduction should be achieved, in
22 part, by ending loopholes and enforcement breakdowns
23 that now foster the underpayment of taxes on income from
24 cross-border transactions and enable foreign-controlled
25 corporations operating in the United States, and foreign

1 persons investing in the United States, to pay no taxes,
2 including by—

3 (1) the adoption of a more streamlined and effi-
4 cient method of enforcing Federal tax laws involving
5 multinational corporations, especially those based
6 abroad, and, in particular, the use of by the Treas-
7 ury Department of a formulaic approach in cases in
8 which the current “arm’s length” transaction rules
9 do not work; and

10 (2) the promulgation of regulations by the Sec-
11 retary of the Treasury or the Secretary’s delegate no
12 later than December 31, 1994, which—

13 (A) establish certification, refund, or other
14 procedures which ensure that any treaty benefit
15 relating to withholding of tax under sections
16 1441 and 1442 of the Internal Revenue Code of
17 1986 is available only to persons entitled to the
18 benefit, and

19 (B) prevent the avoidance of withholding
20 of tax under such sections by use of derivative
21 financial instruments, including regulations pro-
22 viding for the sourcing of income of foreign
23 residents from notional principal contracts as

- 1 income from sources within the United States
- 2 in appropriate cases.

