

108TH CONGRESS
1ST SESSION

S. 1070

To amend the Internal Revenue Code of 1986 to attract foreign corporations to relocate to the area in New York City surrounding the former World Trade Center.

IN THE SENATE OF THE UNITED STATES

MAY 15, 2003

Mr. SCHUMER 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 attract foreign corporations to relocate to the area in New York City surrounding the former World Trade Center.

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 “World Trade Center
5 Zone Tax Incentive Act”.

6 **SEC. 2. TAX TREATMENT OF FOREIGN CORPORATIONS RE-**
7 **LOCATING TO WORLD TRADE CENTER AREA.**

8 (a) IN GENERAL.—Subchapter Y of chapter 1 of the
9 Internal Revenue Code of 1986 (relating to New York Lib-

erty Zone benefits) is amended by adding at the end the following new section:

**“SEC. 1400M. NO ADDITIONAL CORPORATE INCOME TAXES
ON FOREIGN CORPORATIONS RELOCATING
HEADQUARTERS OPERATIONS TO NEW YORK
LIBERTY ZONE.**

“(a) GENERAL RULE.—If there is a qualified headquarters relocation of an eligible foreign corporation, any qualified headquarters activities of the corporation conducted in the New York Liberty Zone shall be treated as conducted outside the United States for purposes of determining—

“(1) the amount of any tax imposed by this chapter, or the amount of withholding tax under chapter 3, on the corporation, or

“(2) whether the corporation has a permanent establishment within the United States for purposes of any applicable income tax treaty between the United States and any foreign country.

“(b) QUALIFIED HEADQUARTERS RELOCATION.—
For purposes of this section—

“(1) IN GENERAL.—The term ‘qualified headquarters relocation’ means any relocation of an eligible foreign corporation’s qualified headquarters ac-

1 activities to the New York Liberty Zone but only if the
2 corporation with respect to such relocation—

3 “(A) before September 11, 2007, enters
4 into a contract—

5 “(i) under which the corporation
6 agrees to acquire, lease, sublease, or other-
7 wise occupy office space located in the New
8 York Liberty Zone for use in the conduct
9 of the activities to be relocated, and

10 “(ii) which requires a substantial fi-
11 nancial commitment or provides a substan-
12 tial cancellation penalty, and

13 “(B) before September 11, 2009—

14 “(i) transfers to the New York Lib-
15 erty Zone qualified headquarters activities
16 meeting the requirements of paragraph
17 (2), and

18 “(ii) locates employees in the New
19 York Liberty Zone in accordance with the
20 requirements of paragraph (3).

21 “(2) TRANSFER OF QUALIFIED HEADQUARTERS
22 ACTIVITIES.—The requirements of this paragraph
23 are met if the transfer of qualified headquarters ac-
24 tivities includes at least the transfer of a substantial
25 part of the following activities which the eligible for-

1 eign corporation was performing for members of its
2 expanded affiliated group immediately before the re-
3 quirement of paragraph (1)(A) is met:

4 “(A) The activities described in clause (ii)
5 of subsection (c)(2)(A).

6 “(B) High-level activities described in
7 clause (iii) of subsection (c)(2)(A).

8 “(C) The activities described in clause (iv)
9 of subsection (c)(2)(A).

10 “(3) TRANSFER OF EMPLOYEES.—

11 “(A) IN GENERAL.—The requirements of
12 this paragraph are met if the eligible foreign
13 corporation locates in the New York Liberty
14 Zone a number of employees equal to or greater
15 than the lesser of—

16 “(i) 200 employees, or

17 “(ii) the greater of—

18 “(I) 10 percent of the employees
19 of the corporation and the members of
20 its expanded affiliated group for
21 which the corporation performs head-
22 quarters activities (as of the date the
23 requirements of paragraph (1)(B) are
24 first met), or

25 “(II) 50 employees.

1 “(B) HIGH-LEVEL EMPLOYEES.—The re-
2 quirements of this paragraph shall be treated as
3 met only if the eligible foreign corporation lo-
4 cates in the New York Liberty Zone at least—

5 “(i) 50 percent of the senior officers
6 of the corporation, and

7 “(ii) 50 percent of the senior business
8 development personnel of the corporation.

9 “(C) CURRENT UNITED STATES EMPLOY-
10 EES NOT COUNTED.—For purposes of deter-
11 mining whether the requirements of this para-
12 graph are first met, and continue to be met
13 during the 2-year period after the date on
14 which the requirements are first met, there
15 shall not be taken into account any individual
16 who was an employee of the eligible foreign cor-
17 poration or any member of its expanded affili-
18 ated group who was located in the United
19 States at any time during the 1-year period
20 ending on the later of—

21 “(i) the date the requirements of sub-
22 section (b)(1)(B) are first met, or

23 “(ii) the date the employee is first lo-
24 cated in the New York Liberty Zone.

1 Any period during which an individual was lo-
2 cated in the New York Liberty Zone solely as
3 part of a qualified headquarters relocation shall
4 not be taken into account for purposes of the
5 preceding sentence.

6 “(D) LOCATED.—An employee shall be
7 treated as located in the New York Liberty
8 Zone or the United States for any period if the
9 services performed by the employee during the
10 period are performed primarily in the New York
11 Liberty Zone or the United States, respectively.

12 “(c) ELIGIBLE FOREIGN CORPORATION; QUALIFIED
13 HEADQUARTERS ACTIVITIES.—For purposes of this sec-
14 tion—

15 “(1) ELIGIBLE FOREIGN CORPORATION.—The
16 term ‘eligible foreign corporation’ means a foreign
17 corporation which—

18 “(A) performs qualified headquarters ac-
19 tivities for 1 or more members of an expanded
20 affiliated group including such corporation, and

21 “(B) agrees to furnish to the Secretary (at
22 such time and in such manner as the Secretary
23 may prescribe) such information as the Sec-
24 retary may require to carry out this section, in-

1 including the gross revenue of the corporation de-
2 rived from qualified headquarters activities.

3 “(2) QUALIFIED HEADQUARTERS ACTIVITIES.—

4 “(A) IN GENERAL.—The term ‘qualified
5 headquarters activities’ means, with respect to
6 any eligible foreign corporation—

7 “(i) the ownership and management
8 of any member of the expanded affiliated
9 group of which it is a member,

10 “(ii) the conduct of any treasury func-
11 tion of a member of the expanded affiliated
12 group of which it is a member, including
13 the borrowing of funds, financing of mem-
14 bers of the group and related entities, and
15 investment of excess corporate funds, but
16 not including the taking of deposits from,
17 or the making of loans to, the public,

18 “(iii) marketing and branding func-
19 tions,

20 “(iv) senior business management and
21 development, and

22 “(v) any other activity incidental to
23 any activity described in clauses (i)
24 through (iv).

1 “(B) CERTAIN ACTIVITIES PREVIOUSLY
2 CONDUCTED IN UNITED STATES NOT IN-
3 CLUDED.—

4 “(i) IN GENERAL.—Such term shall
5 not include any activity which the eligible
6 foreign corporation or any member of its
7 expanded affiliated group engaged in
8 through an office or fixed place of business
9 in the United States at any time during
10 the 3-year period ending on the date the
11 requirements of subsection (b)(1)(B) are
12 first met.

13 “(ii) EXCEPTION FOR RELOCATION
14 ACTIVITIES.—The conduct of any activity
15 as part of a qualified headquarters reloca-
16 tion shall not be taken into account in de-
17 termining whether clause (i) applies to the
18 activity.

19 “(iii) EXCLUSION CEASES TO APPLY
20 IF ACTIVITY NOT CONDUCTED IN UNITED
21 STATES FOR 5 YEARS.—

22 “(I) IN GENERAL.—Clause (i)
23 shall not apply to any activity con-
24 ducted in the New York Liberty Zone
25 during the taxable year described in

1 subclause (II) or any succeeding tax-
2 able year.

3 “(II) APPLICABLE TAXABLE
4 YEAR.—A taxable year is described in
5 this subclause with respect to any ac-
6 tivity if such year is the first taxable
7 year in which ends a consecutive 5-
8 year period which begins after the
9 date the requirements of subsection
10 (b)(1)(B) are first met and during
11 which the eligible foreign corporation
12 or any member of its expanded affili-
13 ated group did not engage in such ac-
14 tivity through an office or fixed place
15 of business within the United States.

16 “(iv) SPECIAL RULES FOR ACQUIRED
17 ENTITIES.—

18 “(I) IN GENERAL.—If an ac-
19 quired entity engaged in an activity
20 described in subparagraph (A)
21 through an office or fixed place of
22 business in the United States (other
23 than an activity which was a qualified
24 headquarters activity of the acquired
25 entity for purposes of subsection (a))

1 at any time during the 1-year period
2 preceding the first date on which the
3 acquired entity became a member of
4 the expanded affiliated group of the
5 eligible foreign corporation, such ac-
6 tivity shall be treated as an activity
7 engaged in by the eligible foreign cor-
8 poration on the day preceding the
9 first day the requirements of sub-
10 section (b)(1)(B) are met.

11 “(II) ACTIVITIES NOT CON-
12 DUCTED IN UNITED STATES FOR 5
13 YEARS.—If subclause (I) applies to an
14 activity, clause (iii) shall be applied to
15 the activity by substituting the date
16 the acquired entity became a member
17 of the expanded affiliated group of the
18 eligible foreign corporation for the
19 first day the requirements of sub-
20 section (b)(1)(B) are met.

21 “(III) ACQUIRED ENTITY.—The
22 term ‘acquired entity’ means any cor-
23 poration or partnership which became
24 a member of the eligible foreign cor-
25 poration’s expanded affiliated group

1 after the first date the requirements
2 of subsection (b)(1)(B) are met.

3 “(v) PREDECESSOR ENTITIES.—For
4 purposes of this subparagraph, any activity
5 conducted by a predecessor or related per-
6 son with respect to a member of an ex-
7 panded affiliated group shall be treated as
8 conducted by the member.

9 “(d) TERMINATION AND RECAPTURE OF TAX BENE-
10 FITS.—

11 “(1) IN GENERAL.—This section shall not apply
12 to any qualified headquarters activities of an eligible
13 foreign corporation for any taxable year if the cor-
14 poration at any time during the taxable year or any
15 preceding taxable year fails to—

16 “(A) conduct the qualified headquarters
17 activities described in subsection (b)(2), or

18 “(B) meet the requirements of subsection
19 (b)(3).

20 The Secretary may waive the application of this
21 paragraph in the case of a de minimis or inadvertent
22 failure which is corrected within a reasonable period
23 of time after discovery.

24 “(2) RECAPTURE OF TAX ON CERTAIN ELIGI-
25 BLE FOREIGN CORPORATIONS.—

1 “(A) IN GENERAL.—In addition to any tax
 2 imposed by this chapter for the first taxable
 3 year during which this section does not apply to
 4 an eligible foreign corporation by reason of
 5 paragraph (1), there is hereby imposed on the
 6 eligible foreign corporation a tax equal to the
 7 recapture amount described in subparagraph
 8 (B).

9 “(B) RECAPTURE AMOUNT.—

10 “(i) IN GENERAL.—The recapture
 11 amount described in this subparagraph
 12 shall be the sum of the amounts deter-
 13 mined for each of the 4 taxable years pre-
 14 ceding the first taxable year to which this
 15 section does not apply by reason of para-
 16 graph (1) by multiplying the qualified tax
 17 benefits for each such year by the following
 18 recapture percentage:

“In the case of—	The recapture percentage is—
The immediately preceding taxable year	80%
The second preceding taxable year	60%
The third preceding taxable year	40%
The fourth preceding taxable year	20%.

19 “(ii) QUALIFIED TAX BENEFITS.—For
 20 purposes of this subparagraph, the term
 21 ‘qualified tax benefits’ means, with respect
 22 to any taxable year described in clause (i),

1 an amount equal to the excess (if any)
2 of—

3 “(I) the amount of the tax liabil-
4 ity which a foreign corporation would
5 have had for the taxable year under
6 this chapter and chapter 3 if this sec-
7 tion had not applied, over

8 “(II) the amount of such tax li-
9 ability for such corporation for such
10 taxable year without regard to this
11 paragraph.

12 “(C) INTEREST.—

13 “(i) IN GENERAL.—In addition to the
14 tax imposed by subparagraph (A), an eligi-
15 ble foreign corporation shall pay interest
16 on the recapture amount.

17 “(ii) CALCULATION OF INTEREST.—
18 The amount of interest under clause (i)
19 shall be determined—

20 “(I) at the underpayment rate
21 specified in section 6621,

22 “(II) separately for each taxable
23 year, and

24 “(III) for the period beginning on
25 the due date for the tax return of the

1 corporation for such taxable year
2 (without regard to extensions) and
3 ending on the due date for the tax re-
4 turn of the corporation for the first
5 taxable year to which this section
6 ceases to apply.

7 “(e) EXPANDED AFFILIATED GROUP.—For purposes
8 of this section—

9 “(1) IN GENERAL.—The term ‘expanded affili-
10 ated group’ means an affiliated group as defined in
11 section 1504(a) but without regard to paragraphs
12 (2) and (3) of section 1504(b), except that section
13 1504(a) shall be applied by substituting ‘50 percent’
14 for ‘80 percent’ each place it appears.

15 “(2) PARTNERSHIPS.—Such term includes any
16 partnership in which the eligible foreign corporation
17 or its expanded affiliated group owns directly or in-
18 directly more than 50 percent of the capital or profit
19 interests.

20 “(f) REGULATIONS.—The Secretary shall prescribe
21 such regulations as may be necessary or appropriate to
22 carry out the purposes of this section, including regula-
23 tions—

24 “(1) which exclude from qualified headquarters
25 activities any activities of a type not ordinarily per-

1 formed by a corporation performing headquarters
2 activities,

3 “(2) to apply this section in the case of eligible
4 foreign corporations that conduct activities in the
5 United States other than qualified headquarters ac-
6 tivities, and

7 “(3) which prevent qualified foreign corpora-
8 tions from expanding the benefits available by rea-
9 son of this paragraph through intercompany trans-
10 actions.”

11 (b) CONFORMING AMENDMENT.—The table of sec-
12 tions for subchapter Y of chapter 1 of the Internal Rev-
13 enue Code of 1986 is amended by adding at the end the
14 following new item:

“Sec. 1400M. No additional corporate income taxes on foreign corporations relo-
cating headquarters operations to New York Liberty Zone.”

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