

108TH CONGRESS
1ST SESSION

S. 970

To amend the Internal Revenue Code of 1986 to preserve jobs and production activities in the United States.

IN THE SENATE OF THE UNITED STATES

MAY 1, 2003

Mr. HOLLINGS 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 preserve jobs and production activities 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Job Protection Act
5 of 2003”.

6 **SEC. 2. REPEAL OF EXCLUSION FOR EXTRATERRITORIAL**

7 **INCOME.**

8 (a) IN GENERAL.—Section 114 of the Internal Rev-
9 enue Code of 1986 is hereby repealed.

10 (b) CONFORMING AMENDMENTS.—

1 (1) Subpart E of part III of subchapter N of
2 chapter 1 of such Code (relating to qualifying for-
3 eign trade income) is hereby repealed.

4 (2) The table of subparts for such part III is
5 amended by striking the item relating to subpart E.

6 (3) The table of sections for part III of sub-
7 chapter B of chapter 1 of such Code is amended by
8 striking the item relating to section 114.

9 (c) EFFECTIVE DATE.—

10 (1) IN GENERAL.—The amendments made by
11 this section shall apply to transactions occurring
12 after the date of the enactment of this Act.

13 (2) BINDING CONTRACTS.—The amendments
14 made by this section shall not apply to any trans-
15 action in the ordinary course of a trade or business
16 which occurs pursuant to a binding contract—

17 (A) which is between the taxpayer and a
18 person who is not a related person (as defined
19 in section 943(b)(3) of such Code, as in effect
20 on the day before the date of the enactment of
21 this Act), and

22 (B) which is in effect on April 11, 2003,
23 and at all times thereafter.

24 For purposes of this paragraph, a binding contract
25 shall include a purchase option, renewal option, or

1 replacement option which is included in such con-
2 tract.

3 (d) REVOCATION OF SECTION 943(e) ELECTIONS.—

4 (1) IN GENERAL.—In the case of a corporation
5 that elected to be treated as a domestic corporation
6 under section 943(e) of the Internal Revenue Code
7 of 1986 (as in effect on the day before the date of
8 the enactment of this Act)—

9 (A) the corporation may revoke such elec-
10 tion, effective as of the date of the enactment
11 of this Act, and

12 (B) if the corporation does revoke such
13 election—

14 (i) such corporation shall be treated
15 as a domestic corporation transferring (as
16 of the date of the enactment of this Act)
17 all of its property to a foreign corporation
18 in connection with an exchange described
19 in section 354 of the Internal Revenue
20 Code of 1986, and

21 (ii) no gain or loss shall be recognized
22 on such transfer.

23 (2) EXCEPTION.—Subparagraph (B)(ii) of
24 paragraph (1) shall not apply to gain on any asset
25 held by the revoking corporation if—

1 (A) the basis of such asset is determined
2 in whole or in part by reference to the basis of
3 such asset in the hands of the person from
4 whom the revoking corporation acquired such
5 asset,

6 (B) the asset was acquired by transfer (not
7 as a result of the election under section 943(e)
8 of such Code) occurring on or after the 1st day
9 on which its election under section 943(e) of
10 such Code was effective, and

11 (C) a principal purpose of the acquisition
12 was the reduction or avoidance of tax.

13 (e) GENERAL TRANSITION.—

14 (1) IN GENERAL.—In the case of a taxable year
15 ending after the date of the enactment of this Act
16 and beginning before January 1, 2009, for purposes
17 of chapter 1 of such Code, each current FSC/ETI
18 beneficiary shall be allowed a deduction equal to the
19 transition amount determined under this subsection
20 with respect to such beneficiary for such year.

21 (2) CURRENT FSC/ETI BENEFICIARY.—The
22 term “current FSC/ETI beneficiary” means any cor-
23 poration which entered into one or more transactions
24 during its taxable year beginning in calendar year

1 2001 with respect to which FSC/ETI benefits were
 2 allowable.

3 (3) TRANSITION AMOUNT.—For purposes of
 4 this subsection—

5 (A) IN GENERAL.—The transition amount
 6 applicable to any current FSC/ETI beneficiary
 7 for any taxable year is the phaseout percentage
 8 of the adjusted base period amount.

9 (B) PHASEOUT PERCENTAGE.—

10 (i) IN GENERAL.—In the case of a
 11 taxpayer using the calendar year as its
 12 taxable year, the phaseout percentage shall
 13 be determined under the following table:

“Years:	The phaseout percentage is:
2004 and 2005	100
2006	75
2007	75
2008	50
2009 and thereafter	0.”

14 (ii) SPECIAL RULE FOR 2003.—The
 15 phaseout percentage for 2003 shall be the
 16 amount that bears the same ratio to 100
 17 percent as the number of days after the
 18 date of the enactment of this Act bears to
 19 365.

20 (iii) SPECIAL RULE FOR FISCAL YEAR
 21 TAXPAYERS.—In the case of a taxpayer
 22 not using the calendar year as its taxable

1 year, the phaseout percentage is the
 2 weighted average of the phaseout percent-
 3 ages determined under the preceding provi-
 4 sions of this paragraph with respect to cal-
 5 endar years any portion of which is in-
 6 cluded in the taxpayer’s taxable year. The
 7 weighted average shall be determined on
 8 the basis of the respective portions of the
 9 taxable year in each calendar year.

10 (4) ADJUSTED BASE PERIOD AMOUNT.—For
 11 purposes of this subsection—

12 (A) IN GENERAL.—In the case of a tax-
 13 payer using the calendar year as its taxable
 14 year, the adjusted base period amount for any
 15 taxable year is the base period amount multi-
 16 plied by the applicable percentage, as deter-
 17 mined in the following table:

“Years:	The applicable percentage is:
2003	100
2004	100
2005	105
2006	110
2007	115
2008	120
2009 and thereafter	0.”

18 (B) BASE PERIOD AMOUNT.—The base pe-
 19 riod amount is the aggregate FSC/ETI benefits
 20 for the taxpayer’s taxable year beginning in cal-
 21 endar year 2001.

1 (C) SPECIAL RULES FOR FISCAL YEAR
2 TAXPAYERS, ETC.—Rules similar to rules of
3 clauses (ii) and (iii) of paragraph (3)(B) shall
4 apply for purposes of this paragraph.

5 (5) FSC/ETI BENEFIT.—For purposes of this
6 subsection, the term “FSC/ETI benefit” means—

7 (A) amounts excludable from gross income
8 under section 114 of such Code, and

9 (B) the exempt foreign trade income of re-
10 lated foreign sales corporations from property
11 acquired from the taxpayer (determined without
12 regard to section 923(a)(5) of such Code (relat-
13 ing to special rule for military property), as in
14 effect on the day before the date of the enact-
15 ment of the FSC Repeal and Extraterritorial
16 Income Exclusion Act of 2000).

17 In determining the FSC/ETI benefit there shall be
18 excluded any amount attributable to a transaction
19 with respect to which the taxpayer is the lessor un-
20 less the leased property was manufactured or pro-
21 duced in whole or in part by the taxpayer.

22 (6) SPECIAL RULE FOR FARM COOPERATIVES.—
23 Under regulations prescribed by the Secretary, de-
24 terminations under this subsection with respect to
25 an organization described in section 943(g)(1) of

1 such Code, as in effect on the day before the date
2 of the enactment of this Act, shall be made at the
3 cooperative level and the purposes of this subsection
4 shall be carried out by excluding amounts from the
5 gross income of its patrons.

6 (7) CERTAIN RULES TO APPLY.—Rules similar
7 to the rules of section 41(f) of such Code shall apply
8 for purposes of this subsection.

9 (8) COORDINATION WITH BINDING CONTRACT
10 RULE.—The deduction determined under paragraph
11 (1) for any taxable year shall be reduced by the
12 phaseout percentage of any FSC/ETI benefit real-
13 ized for the taxable year by reason of subsection
14 (c)(2). The preceding sentence shall not apply to any
15 FSC/ETI benefit attributable to a transaction de-
16 scribed in the last sentence of paragraph (5).

17 (9) SPECIAL RULE FOR TAXABLE YEAR WHICH
18 INCLUDES DATE OF ENACTMENT.—In the case of a
19 taxable year which includes the date of the enact-
20 ment of this Act, the deduction allowed under this
21 subsection to any current FSC/ETI beneficiary shall
22 in no event exceed—

23 (A) 100 percent of such beneficiary's ad-
24 justed base period amount for calendar year
25 2003, reduced by

1 (B) the aggregate FSC/ETI benefits of
 2 such beneficiary with respect to transactions oc-
 3 ccurring during the portion of the taxable year
 4 ending on the date of the enactment of this Act.

5 **SEC. 3. DEDUCTION RELATING TO INCOME ATTRIBUTABLE**
 6 **TO UNITED STATES PRODUCTION ACTIVI-**
 7 **TIES.**

8 (a) IN GENERAL.—Part VIII of subchapter B of
 9 chapter 1 of the Internal Revenue Code of 1986 (relating
 10 to special deductions for corporations) is amended by add-
 11 ing at the end the following new section:

12 **“SEC. 250. INCOME ATTRIBUTABLE TO DOMESTIC PRODUC-**
 13 **TION ACTIVITIES.**

14 “(a) IN GENERAL.—In the case of a corporation,
 15 there shall be allowed as a deduction an amount equal to
 16 10 percent of the qualified production activities income of
 17 the corporation for the taxable year.

18 “(b) PHASEIN.—In the case of taxable years begin-
 19 ning in 2006, 2007, 2008 or 2009, subsection (a) shall
 20 be applied by substituting for the percentage contained
 21 therein the transition percentage determined under the
 22 following table:

“Taxable years beginning in:	The transition percentage is:
2006	1
2007	2
2008	4
2009	9

1 “(c) QUALIFIED PRODUCTION ACTIVITIES IN-
2 COME.—For purposes of this section, the term ‘qualified
3 production activities income’ means the product of—

4 “(1) the portion of the modified taxable income
5 of the taxpayer which is attributable to domestic
6 production activities, and

7 “(2) the domestic/foreign fraction.

8 “(d) DETERMINATION OF INCOME ATTRIBUTABLE
9 TO DOMESTIC PRODUCTION ACTIVITIES.—For purposes
10 of this section—

11 “(1) IN GENERAL.—The portion of the modified
12 taxable income which is attributable to domestic pro-
13 duction activities is so much of the modified taxable
14 income for the taxable year as does not exceed—

15 “(A) the taxpayer’s domestic production
16 gross receipts for such taxable year, reduced by

17 “(B) the sum of—

18 “(i) the costs of goods sold that are
19 allocable to such receipts,

20 “(ii) other deductions, expenses, or
21 losses directly allocable to such receipts,
22 and

23 “(iii) a ratable portion of other deduc-
24 tions, expenses, and losses that are not di-

1 rectly allocable to such receipts or another
2 class of income.

3 “(2) ALLOCATION METHOD.—Except as pro-
4 vided in regulations, allocations under clauses (ii)
5 and (iii) of paragraph (1)(B) shall be made under
6 the principles used in determining the portion of tax-
7 able income from sources within and without the
8 United States.

9 “(3) SPECIAL RULE.—

10 “(A) For purposes of determining costs
11 under clause (i) of paragraph (1)(B), any item
12 or service brought into the United States with-
13 out a transfer price meeting the requirements
14 of section 482 shall be treated as acquired by
15 purchase, and its cost shall be treated as not
16 less than its value when it entered the United
17 States. A similar rule shall apply in determining
18 the adjusted basis of leased or rented property
19 where the lease or rental gives rise to domestic
20 production gross receipts.

21 “(B) In the case of any property described
22 in subparagraph (A) that had been exported by
23 the taxpayer for further manufacture, the in-
24 crease in cost (or adjusted basis) under sub-
25 paragraph (A) shall not exceed the difference

1 between the value of the property when ex-
2 ported and the value of the property when
3 brought back into the United States after the
4 further manufacture.

5 “(4) MODIFIED TAXABLE INCOME.—The term
6 ‘modified taxable income’ means taxable income
7 computed without regard to the deduction allowable
8 under this section.

9 “(e) DOMESTIC PRODUCTION GROSS RECEIPTS.—
10 For purposes of this section—

11 “(1) IN GENERAL.—The term ‘domestic produc-
12 tion gross receipts’ means the gross receipts of the
13 taxpayer which are derived from—

14 “(A) any sale, exchange, or other disposi-
15 tion of, or

16 “(B) any lease, rental or license of,
17 qualifying production property which was manufac-
18 tured, produced, grown, or extracted in whole or in
19 significant part by the taxpayer within the United
20 States.

21 “(2) SPECIAL RULE.—The term ‘domestic pro-
22 duction gross receipts’ includes gross receipts of the
23 taxpayer from the sale, exchange, or other disposi-
24 tion of replacement parts if—

1 “(A) such parts are sold by the taxpayer
2 as replacement parts for qualified production
3 property produced or manufactured in whole or
4 significant part by the taxpayer in the United
5 States, and

6 “(B) the taxpayer (or a related party)
7 owns the designs for such parts.

8 “(3) RELATED PARTY.—The term ‘related
9 party’ means any corporation which is a member of
10 the taxpayer’s expanded affiliated group.

11 “(f) QUALIFYING PRODUCTION PROPERTY.—For
12 purposes of this section—

13 “(1) IN GENERAL.—Except as otherwise pro-
14 vided in this paragraph, the term ‘qualifying produc-
15 tion property’ means—

16 “(A) any tangible personal property,

17 “(B) any computer software, and

18 “(C) any films, tapes, records, or similar
19 reproductions.

20 “(2) EXCLUSIONS FROM QUALIFYING PRODUC-
21 TION PROPERTY.—The term ‘qualifying production
22 property’ shall not include—

23 “(A) consumable property that is sold,
24 leased, or licensed by the taxpayer as an inte-
25 gral part of the provision of services,

1 “(B) oil or gas (or any primary product
2 thereof),

3 “(C) electricity,

4 “(D) water supplied by pipeline to the con-
5 sumer,

6 “(E) any unprocessed timber which is
7 softwood,

8 “(F) utility services, or

9 “(G) any property (not described in para-
10 graph (1)(B)) which is a film, tape, recording,
11 book, magazine, newspaper, or similar property
12 the market for which is primarily topical or oth-
13 erwise essentially transitory in nature.

14 For purposes of subparagraph (E), the term ‘un-
15 processed timber’ means any log, cant, or similar
16 form of timber.

17 “(g) DOMESTIC/FOREIGN FRACTION.—For purposes
18 of this section—

19 “(1) IN GENERAL.—The term ‘domestic/foreign
20 fraction’ means a fraction—

21 “(A) the numerator of which is the value
22 of the domestic production of the taxpayer, and

23 “(B) the denominator of which is the value
24 of the worldwide production of the taxpayer.

1 “(2) VALUE OF DOMESTIC PRODUCTION.—The
2 value of domestic production is the excess of—

3 “(A) the domestic production gross re-
4 ceipts, over

5 “(B) the cost of purchased inputs allocable
6 to such receipts that are deductible under this
7 chapter for the taxable year.

8 “(3) PURCHASED INPUTS.—

9 “(A) IN GENERAL.—Purchased inputs are
10 any of the following items acquired by pur-
11 chase:

12 “(i) Services (other than services of
13 employees) used in manufacture, produc-
14 tion, growth, or extraction activities.

15 “(ii) Items consumed in connection
16 with such activities.

17 “(iii) Items incorporated as part of
18 the property being manufactured, pro-
19 duced, grown, or extracted.

20 “(B) SPECIAL RULE.—Rules similar to the
21 rules of subsection (d)(3) shall apply for pur-
22 poses of this subsection.

23 “(4) VALUE OF WORLDWIDE PRODUCTION.—

1 “(A) IN GENERAL.—The value of world-
2 wide production shall be determined under the
3 principles of paragraph (2), except that—

4 “(i) worldwide production gross re-
5 ceipts shall be taken into account, and

6 “(ii) paragraph (3)(B) shall not apply.

7 “(B) WORLDWIDE PRODUCTION GROSS RE-
8 CEIPTS.—The worldwide production gross re-
9 ceipts is the amount that would be determined
10 under subsection (e) if such subsection were ap-
11 plied without any reference to the United
12 States.

13 “(5) SPECIAL RULE FOR AFFILIATED
14 GROUPS.—

15 “(A) IN GENERAL.—In the case of a tax-
16 payer that is a member of an expanded affili-
17 ated group, the domestic/foreign fraction shall
18 be the amount determined under the preceding
19 provisions of this subsection by treating all
20 members of such group as a single corporation.

21 “(B) EXPANDED AFFILIATED GROUP.—
22 The term ‘expanded affiliated group’ means an
23 affiliated group as defined in section 1504(a),
24 determined—

1 “(i) by substituting ‘50 percent’ for
2 ‘80 percent’ each place it appears, and

3 “(ii) without regard to paragraphs
4 (2), (3), and (4) of section 1504(b).

5 “(h) DEFINITIONS AND SPECIAL RULES.—

6 “(1) UNITED STATES.—For purposes of this
7 section, the term ‘United States’ includes the Com-
8 monwealth of Puerto Rico and any other possession
9 of the United States.

10 “(2) SPECIAL RULE FOR PARTNERSHIPS.—For
11 purposes of this section, a corporation’s distributive
12 share of any partnership item shall be taken into ac-
13 count as if directly realized by the corporation.

14 “(3) COORDINATION WITH MINIMUM TAX.—The
15 deduction under this section shall be allowed for
16 purposes of the tax imposed by section 55; except
17 that for purposes of section 55, alternative minimum
18 taxable income shall be taken into account in deter-
19 mining the deduction under this section.

20 “(4) ORDERING RULE.—The amount of any
21 other deduction allowable under this chapter shall be
22 determined as if this section had not been enacted.

23 “(5) COORDINATION WITH TRANSITION
24 RULES.—For purposes of this section—

1 “(A) domestic production gross receipts
2 shall not include gross receipts from any trans-
3 action if the binding contract transition relief of
4 section 2(e)(2) of the Job Protection Act of
5 2003 applies to such transaction, and

6 “(B) any deduction allowed under section
7 2(e) of such Act shall be disregarded in deter-
8 mining the portion of the taxable income which
9 is attributable to domestic production gross re-
10 cepts.”.

11 (b) CLERICAL AMENDMENT.—The table of sections
12 for part VIII of subchapter B of chapter 1 of such Code
13 is amended by adding at the end the following new item:

“Sec. 250. Income attributable to domestic production activi-
ties.”.

14 (c) EFFECTIVE DATE.—

15 (1) IN GENERAL.—The amendments made by
16 this section shall apply to taxable years beginning
17 after 2005.

18 (2) APPLICATION OF SECTION 15.—Section 15
19 of the Internal Revenue Code of 1986 shall apply to
20 the amendments made by this section as if they were
21 changes in a rate of tax.

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