

105<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3908

To amend the Internal Revenue Code of 1986 to exclude from gross income the dividends paid by tobacco companies which meet youth smoking reduction targets.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 20, 1998

Mr. BRYANT introduced the following bill; which was referred to the Committee on Way and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Internal Revenue Code of 1986 to exclude from gross income the dividends paid by tobacco companies which meet youth smoking reduction targets.

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 “Investing in Our Chil-  
5 dren’s Health Act of 1998”.

1 **SEC. 2. EXCLUSION FROM GROSS INCOME FOR DIVIDENDS**  
2 **FROM TOBACCO COMPANIES WHICH MEET**  
3 **YOUTH SMOKING REDUCTION TARGETS.**

4 (a) IN GENERAL.—Part III of subchapter B of chap-  
5 ter 1 of the Internal Revenue Code of 1986 (relating to  
6 items specifically excluded from gross income) is amended  
7 by inserting after section 115 the following new section:

8 **“SEC. 116. DIVIDENDS FROM TOBACCO COMPANIES WHICH**  
9 **ACHIEVE YOUTH SMOKING REDUCTION TAR-**  
10 **GETS.**

11 “(a) IN GENERAL.—In the case of an individual,  
12 gross income does not include any dividend paid by a cor-  
13 poration to the extent such dividend is attributable to  
14 qualifying earnings and profits.

15 “(b) QUALIFYING EARNINGS AND PROFITS.—

16 “(1) IN GENERAL.—For purposes of this sec-  
17 tion, the term ‘qualifying earnings and profits’  
18 means earnings and profits—

19 “(A) which are from the manufacture in,  
20 or the importation into, the United States of  
21 any tobacco product, and

22 “(B) which are for any taxable year begin-  
23 ning in a calendar year with respect to which  
24 there has been a reduction in the underage use  
25 of such product of not less than the applicable  
26 percentage of the baseline level.

1           “(2) APPLICABLE PERCENTAGE.—For purposes  
 2           of subparagraph (A), the applicable percentage for  
 3           any taxable year is the applicable percentage deter-  
 4           mined under the following table for the calendar  
 5           year in which such taxable year begins.

<b>Calendar year:</b>	<b>Applicable percentage:</b>
2002 .....	10
2003 .....	20
2004 .....	30
2005 .....	40
2006 .....	50
2007 .....	60
2008 .....	70
2009 .....	80
2010 or thereafter .....	90.

6           “(c) YOUTH SMOKING REDUCTION TARGET.—For  
 7           purposes of this section, the baseline level for any tobacco  
 8           product manufactured or imported by any corporation,  
 9           and whether the requirement of subsection (b)(2) has been  
 10          met, shall be determined by the Secretary of Health and  
 11          Human Services in accordance with section 3 of the In-  
 12          vesting in Our Children’s Health Act of 1998.

13          “(d) SPECIAL RULES.—For purposes of this sec-  
 14          tion—

15                 “(1) A dividend from a regulated investment  
 16                 company shall be subject to the limitation prescribed  
 17                 in section 854(c).

18                 “(2) The amount of dividends properly allocable  
 19                 to a beneficiary under section 652 or 662 shall be  
 20                 deemed to have been received by the beneficiary rat-

1 ably on the same date that the dividends were re-  
2 ceived by the estate or trust.

3 “(e) CERTAIN NONRESIDENT ALIENS INELIGIBLE  
4 FOR EXCLUSION.—In the case of a nonresident alien indi-  
5 vidual, subsection (a) shall apply only—

6 “(1) in determining the tax imposed for the  
7 taxable year pursuant to section 871(b)(1) and only  
8 in respect of dividends which are effectively con-  
9 nected with the conduct of a trade or business with-  
10 in the United States, or

11 “(2) in determining the tax imposed for the  
12 taxable year pursuant to section 877(b).”

13 (b) CONFORMING AMENDMENTS.—

14 (1) Subsection (e) of section 584 of such Code  
15 is amended by adding at the end the following new  
16 sentence:

17 “The proportionate share of each participant in the  
18 amount of dividends received by the common trust fund  
19 and to which section 116 applies shall be considered for  
20 purposes of such section as having been received by such  
21 participant.”

22 (2) Subsection (a) of section 643 of such Code  
23 is amended by inserting after paragraph (7) the fol-  
24 lowing new paragraph:

1           “(8) DIVIDENDS.—There shall be included the  
2 amount of any dividends excluded from gross income  
3 pursuant to section 116.”

4           (3) Section 854 of such Code is amended by  
5 adding at the end the following new subsection:

6           “(c) TREATMENT UNDER SECTION 116.—

7           “(1) IN GENERAL.—For purposes of section  
8 116, in the case of any dividend (other than a divi-  
9 dend described in subsection (a)) received from a  
10 regulated investment company which meets the re-  
11 quirements of section 852 for the taxable year in  
12 which it paid the dividend, a portion of such divi-  
13 dend shall be treated as excludable under section  
14 116 based on the portion of the company’s gross in-  
15 come (determined without regard to gain from the  
16 sale or other disposition of stock or securities) which  
17 consists of dividends which are so excludable.

18           “(2) NOTICE TO SHAREHOLDERS.—The amount  
19 of any distribution by a regulated investment com-  
20 pany which may be taken into account as a dividend  
21 for purposes of the exclusion under section 116 shall  
22 not exceed the amount so designated by the com-  
23 pany in a written notice to its shareholders mailed  
24 not later than 45 days after the close of its taxable  
25 year.”

1           (4) The table of sections for part III of sub-  
2           chapter B of chapter 1 of such Code is amended by  
3           inserting after the item relating to section 115 the  
4           following new item:

“Sec. 116. Dividends from tobacco companies which achieve youth  
smoking reduction targets.”

5           (c) EFFECTIVE DATE.—The amendments made by  
6           this section shall apply with respect to taxable years begin-  
7           ning after the date of the enactment of this Act.

8   **SEC. 3. CHILD TOBACCO USE SURVEYS.**

9           (a) ANNUAL PERFORMANCE SURVEY.—Not later  
10          than October 1, 1999, and annually thereafter, the Sec-  
11          retary of Health and Human Services (hereafter in this  
12          section referred to as the “Secretary”) shall conduct a sur-  
13          vey to determine—

14                 (1) the percentage of all young individuals who  
15                 used a type of tobacco product within the 30-day pe-  
16                 riod prior to the conduct of the survey; and

17                 (2) the percentage of young individuals who  
18                 identify each brand of each type of tobacco product  
19                 as the usual brand smoked or used within such 30-  
20                 day period.

21          (b) YOUNG INDIVIDUALS.—For the purposes of this  
22          section, the term “young individuals” means individuals  
23          who are under 18 years of age.

24          (c) BASELINE LEVEL.—

1           (1) IN GENERAL.—For the purposes of this sec-  
2           tion, the term “baseline level” means, with respect  
3           to each type of tobacco product, the percentage of  
4           young individuals determined to have used such to-  
5           bacco products in the annual performance survey de-  
6           scribed in subsection (a) completed by October 1,  
7           1999.

8           (2) MANUFACTURER’S BASELINE LEVEL.—For  
9           the purposes of this section, the term “manufactur-  
10          er’s baseline level” means, with respect to each type  
11          of tobacco product, the percentage of young individ-  
12          uals determined to have identified a brand of each  
13          such tobacco product of such manufacturer as the  
14          usual brand smoked or used in the annual perform-  
15          ance survey described in subsection (a) completed by  
16          October 1, 1999.

17          (3) USE OF CERTAIN DATA OR METHODOLOGY.—  
18

19                 (A) IN GENERAL.—For purposes of deter-  
20                 mining the percentages under paragraphs (1)  
21                 and (2), the Secretary may use the data col-  
22                 lected through national surveys of young indi-  
23                 viduals. Such surveys shall—

- 1 (i) be based on a nationally represent-  
2 ative sample of at least 20,000 completed  
3 interviews of young individuals;
- 4 (ii) be on a household-based in person  
5 survey;
- 6 (iii) measure the use of tobacco prod-  
7 uct within the past 30 days;
- 8 (iv) identify the usual brand of each  
9 type of tobacco product used within the  
10 past 30 days; and
- 11 (v) calculate the actual percentage re-  
12 ductions in the underage use of a type of  
13 tobacco product (or, in the case of the  
14 manufacturer-specific surcharge, the use of  
15 a type of tobacco product of a manufac-  
16 turer) based on the point estimates from  
17 the annual performance survey.
- 18 For purposes of clause (iv), point estimates  
19 shall be deemed acceptable for measuring com-  
20 pliance with percentage reduction targets and  
21 for calculating surcharges if the precision of es-  
22 timates of the proportion of young individuals  
23 reporting the use of a type of tobacco product  
24 (or, in the case of the manufacturer-specific  
25 surcharge, the use of a type of tobacco product

1 of a manufacturer) for the purpose of measur-  
2 ing compliance with percentage reduction tar-  
3 gets and calculating surcharges without regard  
4 to the 95 percent confidence interval around  
5 such point estimates if the precision of esti-  
6 mates of the percentage of young individuals re-  
7 porting use of a type of tobacco product (or,  
8 in the case of the manufacturer-specific sur-  
9 charge, the use of a type of tobacco product of  
10 a manufacturer) is such that the 95 percent  
11 confidence interval around such point estimates  
12 is no more than plus or minus 1 percent.

13 (B) CONCLUSIVE ACCURATENESS.—A sur-  
14 vey using the methodology described in sub-  
15 paragraph (A) shall be deemed conclusively  
16 proper, correct, and accurate for purposes of  
17 this Act. The Secretary may, by notice and  
18 comment rulemaking, subsequently adopt a dif-  
19 ferent survey methodology.

20 (C) FINAL DETERMINATION.—The deter-  
21 mination of the Secretary as to the amount and  
22 allocation of the surcharge under this section  
23 shall be final and the manufacturer shall pay  
24 such surcharge within 30 days of the date on  
25 which the manufacturer is assessed. Such pay-

1           ment shall be retained by the Secretary pending  
2           final judicial review of what, if any, change in  
3           the surcharge is appropriate.

4           (D) REVIEW.—The amount of any sur-  
5           charge paid under this section shall be subject  
6           to judicial review by the United States Court of  
7           Appeals for the District of Columbia Circuit,  
8           based on the arbitrary and capricious standard  
9           of section 706 of title 5, United States Code.  
10          Notwithstanding any other provision of law, no  
11          court shall have the authority to stay any sur-  
12          charge payment due to the Secretary under this  
13          section pending judicial review until the Sec-  
14          retary has made or failed to make a compliance  
15          determination, as described under this section,  
16          that has adversely affected the person seeking  
17          the review.

18          (E) NONAPPLICABILITY.—Chapter 35 of  
19          title 44, United States Code, shall not apply to  
20          information required for the purposes of carry-  
21          ing out this subsection.

22          (F) AMENDMENT TO PUBLIC HEALTH  
23          SERVICE ACT.—Section 308(d) of the Public  
24          Health Service Act (42 U.S.C. 242m(d)) is  
25          amended—

1 (i) by inserting after “or 307” the fol-  
2 lowing: “, or a survey conducted under sec-  
3 tion 132 of the KIDS Act,”; and

4 (ii) by inserting after “or 306” the  
5 following: “, or in the course of a survey  
6 conducted under section 132 of the KIDS  
7 Act,”.

8 (d) ADMINISTRATION.—

9 (1) TECHNICAL ADJUSTMENTS.—The Secretary  
10 may make technical changes in the manner in which  
11 the surveys are conducted under this section to re-  
12 flect improved methodology so long as adjustments  
13 are made to ensure that the results of the surveys  
14 are comparable from year to year.

15 (2) PARTICIPATION IN SURVEY.—Notwithstand-  
16 ing any other provision of law, the Secretary may  
17 conduct a survey under this section involving minors  
18 if the results of such survey with respect to such mi-  
19 nors are kept confidential and not disclosed.

20 (e) TOBACCO PRODUCT.—For the purposes of this  
21 section, cigarettes, cigars, little cigars, snuff, chewing to-  
22 bacco, pipe tobacco, and roll-your-own tobacco shall each  
23 be considered as a separate type of tobacco product.

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