

109TH CONGRESS  
1ST SESSION

# S. 196

To amend the Internal Revenue Code of 1986 to provide for the taxation of income of controlled foreign corporations attributable to imported property.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 26, 2005

Mr. DORGAN (for himself, Ms. MIKULSKI, Mr. FEINGOLD, Mr. KOHL, Mr. HARKIN, Mr. KENNEDY, Mr. LEAHY, Mr. LEVIN, and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide for the taxation of income of controlled foreign corporations attributable to imported property.

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. TAXATION OF INCOME OF CONTROLLED FOR-**  
4 **EIGN CORPORATIONS ATTRIBUTABLE TO IM-**  
5 **PORTED PROPERTY.**

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

1 end of paragraph (5) and inserting “, and”, and by adding  
 2 at the end the following new paragraph:

3 “(6) imported property income for the taxable  
 4 year (determined under subsection (j) and reduced  
 5 as provided in subsection (b)(5)).”.

6 (b) DEFINITION OF IMPORTED PROPERTY IN-  
 7 COME.—Section 954 of the Internal Revenue Code of 1986  
 8 is amended by adding at the end the following new sub-  
 9 section:

10 “(j) IMPORTED PROPERTY INCOME.—

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

15 “(A) manufacturing, producing, growing,  
 16 or extracting imported property;

17 “(B) the sale, exchange, or other disposi-  
 18 tion of imported property; or

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

21 Such term shall not include any foreign oil and gas  
 22 extraction income (within the meaning of section  
 23 907(c)) or any foreign oil related income (within the  
 24 meaning of section 907(c)).

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

3           “(A) IN GENERAL.—Except as otherwise  
4 provided in this paragraph, the term ‘imported  
5 property’ means property which is imported  
6 into the United States by the controlled foreign  
7 corporation or a related person.

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

16           “(i) such property would be imported  
17 into the United States; or

18           “(ii) such property would be used as  
19 a component in other property which would  
20 be imported into the United States.

21           “(C) EXCEPTION FOR PROPERTY SUBSE-  
22 QUENTLY EXPORTED.—The term ‘imported  
23 property’ does not include any property which is  
24 imported into the United States and which—

1           “(i) before substantial use in the  
2           United States, is sold, leased, or rented by  
3           the controlled foreign corporation or a re-  
4           lated person for direct use, consumption,  
5           or disposition outside the United States; or

6           “(ii) is used by the controlled foreign  
7           corporation or a related person as a com-  
8           ponent in other property which is so sold,  
9           leased, or rented.

10           “(3) DEFINITIONS AND SPECIAL RULES.—

11           “(A) IMPORT.—For purposes of this sub-  
12           section, the term ‘import’ means entering, or  
13           withdrawal from warehouse, for consumption or  
14           use. Such term includes any grant of the right  
15           to use intangible property (as defined in section  
16           936(h)(3)(B)) in the United States.

17           “(B) UNITED STATES.—For purposes of  
18           this subsection, the term ‘United States’ in-  
19           cludes the Commonwealth of Puerto Rico, the  
20           Virgin Islands of the United States, Guam,  
21           American Samoa, and the Commonwealth of  
22           the Northern Mariana Islands.

23           “(C) UNRELATED PERSON.—For purposes  
24           of this subsection, the term ‘unrelated person’  
25           means any person who is not a related person

1 with respect to the controlled foreign corpora-  
2 tion.

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

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

11 (1) BEFORE 2007.—

12 (A) IN GENERAL.—Paragraph (1) of sec-  
13 tion 904(d) of the Internal Revenue Code of  
14 1986 (relating to separate application of section  
15 with respect to certain categories of income), as  
16 in effect for taxable years beginning before Jan-  
17 uary 1, 2007, is amended by striking “and” at  
18 the end of subparagraph (H), by redesignating  
19 subparagraph (I) as subparagraph (J), and by  
20 inserting after subparagraph (H) the following  
21 new subparagraph:

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

23 (B) IMPORTED PROPERTY INCOME DE-  
24 FINED.—Paragraph (2) of section 904(d) of  
25 such Code, as so in effect, is amended by redese-

1           ignating subparagraphs (H) and (I) as subpara-  
2           graphs (I) and (J), respectively, and by insert-  
3           ing after subparagraph (G) the following new  
4           subparagraph:

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

10          (C) LOOK-THRU RULES TO APPLY.—Sub-  
11          paragraph (F) of section 904(d)(3) of such  
12          Code, as so in effect, is amended by striking  
13          “or (D)” and inserting “(D), or (I)”.

14          (2) AFTER 2006.—

15          (A) IN GENERAL.—Paragraph (1) of sec-  
16          tion 904(d) of such Code (relating to separate  
17          application of section with respect to certain  
18          categories of income), as in effect for taxable  
19          years beginning after December 31, 2006, is  
20          amended by striking “and” at the end of sub-  
21          paragraph (A), by redesignating subparagraph  
22          (B) as subparagraph (C), and by inserting after  
23          subparagraph (A) the following new subpara-  
24          graph:

25          “(B) imported property income, and”.

1 (B) IMPORTED PROPERTY INCOME DE-  
 2 FINED.—Paragraph (2) of section 904(d) of  
 3 such Code, as so in effect, is amended by redesi-  
 4 gnating subparagraphs (I) and (J) as subpara-  
 5 graphs (J) and (K), respectively, and by insert-  
 6 ing after subparagraph (H) the following new  
 7 subparagraph:

8 “(I) IMPORTED PROPERTY INCOME.—The  
 9 term ‘imported property income’ means any in-  
 10 come received or accrued by any person which  
 11 is of a kind which would be imported property  
 12 income (as defined in section 954(j)).”.

13 (C) CONFORMING AMENDMENT.—Clause  
 14 (ii) of section 904(d)(2)(A) of such Code, as so  
 15 in effect, is amended by inserting “or imported  
 16 property income” after “passive category in-  
 17 come”.

18 (d) TECHNICAL AMENDMENTS.—

19 (1) Clause (iii) of section 952(c)(1)(B) of the  
 20 Internal Revenue Code of 1986 (relating to certain  
 21 prior year deficits may be taken into account) is  
 22 amended—

23 (A) by redesignating subclauses (II), (III),  
 24 (IV), and (V) as subclauses (III), (IV), (V), and  
 25 (VI), and

1 (B) by inserting after subclause (I) the fol-  
2 lowing new subclause:

3 “(II) imported property in-  
4 come,”.

5 (2) Paragraph (5) of section 954(b) of such  
6 Code (relating to deductions to be taken into ac-  
7 count) is amended by striking “and the foreign base  
8 company oil related income” and inserting “the for-  
9 eign base company oil related income, and the im-  
10 ported property income”.

11 (e) EFFECTIVE DATES.—

12 (1) IN GENERAL.—Except as provided in para-  
13 graph (2), the amendments made by this section  
14 shall apply to taxable years of foreign corporations  
15 beginning after the date of the enactment of this  
16 Act, and to taxable years of United States share-  
17 holders within which or with which such taxable  
18 years of such foreign corporations end.

19 (2) SUBSECTION (c).—The amendments made  
20 by subsection (c)(1) shall apply to taxable years be-  
21 ginning after the date of the enactment of this Act  
22 and before January 1, 2007, and the amendments  
23 made by subsection (c)(2) shall apply to taxable  
24 years beginning after December 31, 2006.

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