

PENDING



AMENDMENT NO. _____

Calendar No. _____

Purpose: To strike the deduction relating to income attributable to United States production activities and the international tax provisions and allow a credit for manufacturing wages, and for other purposes.

IN THE SENATE OF THE UNITED STATES—108th Cong., 2d Sess.

S. 1637

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AMENDMENT No. 3112

By Graham (FL)

To: S. 1637

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Page(s)

GPO: 2002 83-247(Mac)

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. GRAHAM (for himself and Mr. DAYTON)

Viz:

- 1 Strike section 102 and title II and insert the fol-
- 2 lowing:
- 3 **SEC. 102. MANUFACTURING JOBS CREDIT.**
- 4 (a) IN GENERAL.—Subpart D of part IV of sub-
- 5 chapter A of chapter 1 (relating to business-related cred-

1 its), as amended by this Act, is amended by adding at
2 the end the following:

3 **“SEC. 45S. MANUFACTURING JOBS CREDIT.**

4 “(a) GENERAL RULE.—For purposes of section 38,
5 in the case of an eligible taxpayer, the manufacturing jobs
6 credit determined under this section is an amount equal
7 to 1.56 percent of the W-2 wages paid by the taxpayer
8 during the taxable year attributable to the taxpayer’s do-
9 mestic production gross receipts for such taxable year.

10 “(b) ELIGIBLE TAXPAYER.—For purposes of this
11 section, the term ‘eligible taxpayer’ means any taxpayer
12 which has domestic production gross receipts for the tax-
13 able year and the preceding taxable year.

14 “(c) W-2 WAGES.—For purposes of this section—

15 “(1) W-2 WAGES.—The term ‘W-2 wages’
16 means the sum of the aggregate amounts the tax-
17 payer is required to include on statements under
18 paragraphs (3) and (8) of section 6051(a) with re-
19 spect to employment of employees of the taxpayer
20 during the taxpayer’s taxable year.

21 “(2) LIMITATION.—The aggregate amount of
22 W-2 wages taken into account with respect to any
23 employee for any taxable year shall not exceed
24 \$35,000.

25 “(3) SPECIAL RULES.—

1 “(A) PASS-THRU ENTITIES.—In the case
2 of an S corporation, partnership, estate or
3 trust, or other pass-thru entity, the determina-
4 tion of W-2 wages shall be made at the entity
5 level.

6 “(B) ACQUISITIONS AND DISPOSITIONS.—
7 The Secretary shall provide for the determina-
8 tion of W-2 wages in cases where the taxpayer
9 acquires, or disposes of, the major portion of a
10 trade or business or the major portion of a sep-
11 arate unit of a trade or business during the tax-
12 able year.

13 “(C) COORDINATION WITH TARGETED
14 JOBS CREDIT, ETC.—Such term shall not in-
15 clude wages attributable to service taken into
16 account in determining the credit under section
17 45A, 51, or 1396.

18 “(d) DOMESTIC PRODUCTION GROSS RECEIPTS.—
19 For purposes of this section, the term ‘domestic produc-
20 tion gross receipts’ means the gross receipts of the tax-
21 payer which are derived from—

22 “(1) any sale, exchange, or other disposition of,

23 or

24 “(2) any lease, rental, or license of,

1 that portion of qualifying production property which was
2 manufactured, produced, grown, or extracted by the tax-
3 payer within the United States.

4 “(e) QUALIFYING PRODUCTION PROPERTY.—For
5 purposes of this section—

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

9 “(A) any tangible personal property,

10 “(B) any computer software, and

11 “(C) any property described in section
12 168(f) (3) or (4), including any underlying
13 copyright or trademark.

14 “(2) EXCLUSIONS FROM QUALIFYING PRODUC-
15 TION PROPERTY.—The term ‘qualifying production
16 property’ shall not include—

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

20 “(B) oil or gas,

21 “(C) electricity,

22 “(D) water supplied by pipeline to the con-
23 sumer,

24 “(E) utility services, or

1 “(F) any film, tape, recording, book, mag-
2 azine, newspaper, or similar property the mar-
3 ket for which is primarily topical or otherwise
4 essentially transitory in nature.

5 “(f) UNITED STATES.—For purposes of subsection
6 (e), the term ‘United States’ includes the Commonwealth
7 of Puerto Rico, Guam, American Samoa, the Common-
8 wealth of the Northern Mariana Islands, and the Virgin
9 Islands of the United States.

10 “(g) CERTAIN RULES MADE APPLICABLE.—For pur-
11 poses of this section, rules similar to the rules of section
12 52 shall apply.”.

13 (b) CREDIT TO BE PART OF GENERAL BUSINESS
14 CREDIT.—Section 38(b) (relating to current year business
15 credit), as amended by this Act, is amended by striking
16 “plus” at the end of paragraph (29), by striking the period
17 at the end of paragraph (30) and inserting “, plus”, and
18 by adding at the end the following:

19 “(31) the manufacturing jobs credit determined
20 under section 45S.”.

21 (c) DENIAL OF DEDUCTION FOR PORTION OF WAGES
22 EQUAL TO MANUFACTURING JOBS CREDIT.—

23 (1) Subsection (a) of section 280C (relating to
24 rule for targeted jobs credit) is amended by inserting
25 “45S(a),” after “45A(a),”.

1 (2) Subsection (c) of section 196 (relating to
2 deduction for certain unused business credits), as
3 amended by this Act, is amended by striking “and”
4 at the end of paragraph (12), by striking the period
5 at the end of paragraph (13) and inserting “, and”,
6 and by adding at the end the following new para-
7 graph:

8 “(14) the manufacturing jobs credit determined
9 under section 45S(a).”.

10 (d) DENIAL OF CARRYBACKS TO PREENACTMENT
11 YEARS.—Subsection (d) of section 39, as amended by this
12 Act, is amended by adding at the end thereof the following
13 new paragraph:

14 “(16) NO CARRYBACK OF SECTION 45S CREDIT
15 BEFORE ENACTMENT.—No portion of the unused
16 business credit for any taxable year which is attrib-
17 utable to the manufacturing jobs credit determined
18 under section 45S may be carried to a taxable year
19 ending on or before the date of the enactment of
20 section 45S.”.

21 (e) CLERICAL AMENDMENT.—The table of sections
22 for subpart D of part IV of subchapter A of chapter 1,
23 as amended by this Act, is amended by adding at the end
24 the following:

“Sec. 45S Manufacturing jobs credit.”.

1 (f) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years ending after the
3 date of the enactment of this Act.

4 **TITLE II—INTERNATIONAL TAX**
5 **PROVISIONS**

6 **SEC. 201. DETERMINATION OF FOREIGN PERSONAL HOLD-**
7 **ING COMPANY INCOME WITH RESPECT TO**
8 **TRANSACTIONS IN COMMODITIES.**

9 (a) IN GENERAL.—Clauses (i) and (ii) of section
10 954(c)(1)(C) (relating to commodity transactions) are
11 amended to read as follows:

12 “(i) arise out of commodity hedging
13 transactions (as defined in paragraph
14 (4)(A)),

15 “(ii) are active business gains or
16 losses from the sale of commodities, but
17 only if substantially all of the controlled
18 foreign corporation’s commodities are
19 property described in paragraph (1), (2),
20 or (8) of section 1221(a), or”.

21 (b) DEFINITION AND SPECIAL RULES.—Subsection
22 (c) of section 954 is amended by adding after paragraph
23 (3) the following new paragraph:

24 “(4) DEFINITION AND SPECIAL RULES RELAT-

25 ING TO COMMODITY TRANSACTIONS.—

1 “(A) COMMODITY HEDGING TRANS-
2 ACTIONS.—For purposes of paragraph
3 (1)(C)(i), the term ‘commodity hedging trans-
4 action’ means any transaction with respect to a
5 commodity if such transaction—

6 “(i) is a hedging transaction as de-
7 fined in section 1221(b)(2), determined—

8 “(I) without regard to subpara-
9 graph (A)(ii) thereof,

10 “(II) by applying subparagraph
11 (A)(i) thereof by substituting ‘ordi-
12 nary property or property described in
13 section 1231(b)’ for ‘ordinary prop-
14 erty’, and

15 “(III) by substituting ‘controlled
16 foreign corporation’ for ‘taxpayer’
17 each place it appears, and

18 “(ii) is clearly identified as such in ac-
19 cordance with section 1221(a)(7).

20 “(B) TREATMENT OF DEALER ACTIVITIES
21 UNDER PARAGRAPH (1)(C).—Commodities with
22 respect to which gains and losses are not taken
23 into account under paragraph (2)(C) in com-
24 puting a controlled foreign corporation’s foreign
25 personal holding company income shall not be

1 taken into account in applying the substantially
2 all test under paragraph (1)(C)(ii) to such cor-
3 poration.

4 “(C) REGULATIONS.—The Secretary shall
5 prescribe such regulations as are appropriate to
6 carry out the purposes of paragraph (1)(C) in
7 the case of transactions involving related par-
8 ties.”.

9 (e) MODIFICATION OF EXCEPTION FOR DEALERS.—
10 Clause (i) of section 954(c)(2)(C) is amended by inserting
11 “and transactions involving physical settlement” after
12 “(including hedging transactions”.

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to transactions entered into after
15 December 31, 2004.