

John Breaux
PENDING

AMENDMENT NO. _____

Calendar No. _____

Purpose: To limit the amount of deferred foreign income that can be repatriated at a lower rate.

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

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. BREAUX

Viz:

- 1 On page 88, between lines 17 and 18, insert:
- 2 “(4) DOLLAR LIMITATION.—
- 3 “(A) IN GENERAL.—Notwithstanding para-
- 4 graph (1), the excess qualified foreign distribu-
- 5 tion amount shall not exceed the lesser of—
- 6 “(i) the amount shown on the applica-
- 7 ble financial statement as earnings perma-

1 nently reinvested outside the United
2 States, or

3 “(ii) the excess (if any) of—

4 “(I) the estimated aggregate
5 qualified expenditures of the corpora-
6 tion for taxable years ending in 2005,
7 2006, and 2007, over

8 “(II) the aggregate qualified ex-
9 penditures of the corporation for tax-
10 able years ending in 2001, 2002, and
11 2003.

12 “(B) EARNINGS PERMANENTLY REIN-
13 VESTED OUTSIDE THE UNITED STATES.—

14 “(i) IN GENERAL.—If an amount on
15 an applicable financial statement is shown
16 as Federal income taxes not required to be
17 reserved by reason of the permanent rein-
18 vestment of earnings outside the United
19 States, subparagraph (A)(i) shall be ap-
20 plied by reference to the earnings to which
21 such taxes relate.

22 “(ii) NO STATEMENT OR STATED
23 AMOUNT.—If there is no applicable finan-
24 cial statement or such a statement fails to
25 show a specific amount described in sub-

1 paragraph (A)(i) or clause (i), such
2 amount shall be treated as being zero.

3 “(iii) APPLICABLE FINANCIAL STATE-
4 MENT.—For purposes of this paragraph,
5 the term ‘applicable financial statement’
6 means the most recently audited financial
7 statement (including notes and other docu-
8 ments which accompany such statement)—

9 “(I) which is certified on or be-
10 fore March 31, 2004, as being pre-
11 pared in accordance with generally ac-
12 cepted accounting principles, and

13 “(II) which is used for the pur-
14 poses of a statement or report to
15 creditors, to shareholders, or for any
16 other substantial nontax purpose.

17 In the case of a corporation required to file
18 a financial statement with the Securities
19 and Exchange Commission, such term
20 means the most recent such statement
21 filed on or before March 31, 2004.

22 “(C) QUALIFIED EXPENDITURES.—For
23 purposes of this paragraph, the term ‘qualified
24 expenditures’ means—

1 “(i) wages (as defined in section
2 3121(a)),

3 “(ii) additions to capital accounts for
4 property located within the United States
5 (including any amount which would be so
6 added but for a provision of this title pro-
7 viding for the expensing of such amount),

8 “(iii) qualified research expenses (as
9 defined in section 41(b)) and basic re-
10 search payments (as defined in section
11 41(e)(2)), and

12 “(iv) irrevocable contributions to a
13 qualified employer plan (as defined in sec-
14 tion 72(p)(4)) but only if no deduction is
15 allowed under this chapter with respect to
16 such contributions.

17 “(D) RECAPTURE.—If the taxpayer’s esti-
18 mate of qualified expenditures under subpara-
19 graph (A)(ii)(I) is greater than the actual ex-
20 penditures, then the tax imposed by this chap-
21 ter for the taxpayer’s last taxable year ending
22 in 2007 shall be increased by the sum of—

23 “(i) the increase (if any) in tax which
24 would have resulted in the taxable year for
25 which the deduction under this section was

1 allowed if the actual expenditures were
2 used in lieu of the estimated expenditures,
3 plus

4 “(ii) interest at the underpayment
5 rate, determined as if the increase in tax
6 described in clause (i) were an under-
7 payment for the taxable year of the deduc-
8 tion.

9 “(5) LIMITATION ON CONTROLLED FOREIGN
10 CORPORATIONS IN POSSESSIONS.—In computing the
11 excess qualified foreign distribution amount under
12 paragraph (1) and the base dividend amount under
13 paragraph (2), there shall not be taken into account
14 dividends received from any controlled foreign cor-
15 poration created or organized under the laws of any
16 possession of the United States.