

*Ernest R Hollings*

*Per 12:45p*  
**Pending**

AMENDMENT NO.

CAL. NO.

~~STAFF WORKING DRAFT~~

May 6, 2004

Purpose: To strike the international tax provisions that are unrelated to the FSC/ETI repeal and eliminate the phase-in of the deduction for qualified production activities income.

IN THE

**AMENDMENT No. 3134**

By *Hollings*

To: *S. 1637*

*15*

Page(s)

GPO: 2002 83-247(Mac)

INTENDED to be proposed by Mr. HOLLINGS

Viz:

1 On page 19, beginning with line 25, strike through

2 line 3 on page 98 and insert the following:

3 “(a) ALLOWANCE OF DEDUCTION.—There shall be

4 allowed as a deduction an amount equal to 9 percent of

5 the qualified production activities income of the taxpayer

6 for the taxable year.

7 “(b) DEDUCTION LIMITED TO WAGES PAID.—

1           “(1) IN GENERAL.—The amount of the deduc-  
2           tion allowable under subsection (a) for any taxable  
3           year shall not exceed 50 percent of the W-2 wages  
4           of the employer for the taxable year.

5           “(2) W-2 WAGES.—For purposes of paragraph  
6           (1), the term ‘W-2 wages’ means the sum of the ag-  
7           gregate amounts the taxpayer is required to include  
8           on statements under paragraphs (3) and (8) of sec-  
9           tion 6051(a) with respect to employment of employ-  
10          ees of the taxpayer during the taxpayer’s taxable  
11          year.

12          “(3) SPECIAL RULES.—

13                 “(A) PASS-THRU ENTITIES.—In the case  
14                 of an S corporation, partnership, estate or  
15                 trust, or other pass-thru entity, the limitation  
16                 under this subsection shall apply at the entity  
17                 level.

18                 “(B) ACQUISITIONS AND DISPOSITIONS.—  
19                 The Secretary shall provide for the application  
20                 of this subsection in cases where the taxpayer  
21                 acquires, or disposes of, the major portion of a  
22                 trade or business or the major portion of a sep-  
23                 arate unit of a trade or business during the tax-  
24                 able year.

1       “(c) QUALIFIED PRODUCTION ACTIVITIES IN-  
2 COME.—For purposes of this section—

3           “(1) IN GENERAL.—The term ‘qualified produc-  
4 tion activities income’ means an amount equal to the  
5 portion of the modified taxable income of the tax-  
6 payer which is attributable to domestic production  
7 activities.

8           “(2) REDUCTION FOR TAXABLE YEARS BEGIN-  
9 NING BEFORE 2013.—The amount otherwise deter-  
10 mined under paragraph (1) (the ‘unreduced  
11 amount’) shall not exceed—

12           “(A) in the case of taxable years beginning  
13 before 2010, the product of the unreduced  
14 amount and the domestic/worldwide fraction,  
15 and

16           “(B) in the case of taxable years beginning  
17 in 2010, 2011, or 2012, an amount equal to the  
18 sum of—

19           “(i) the product of the unreduced  
20 amount and the domestic/worldwide frac-  
21 tion, plus

22           “(ii) the applicable percentage of an  
23 amount equal to the unreduced amount  
24 minus the amount determined under clause  
25 (i).

1 For purposes of subparagraph (B)(ii), the applicable  
2 percentage is 25 percent for 2010, 50 percent for  
3 2011, and 75 percent for 2012.

4 “(d) DETERMINATION OF INCOME ATTRIBUTABLE  
5 TO DOMESTIC PRODUCTION ACTIVITIES.—For purposes  
6 of this section—

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

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

13 “(B) the sum of—

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

16 “(ii) other deductions, expenses, or  
17 losses directly allocable to such receipts,  
18 and

19 “(iii) a proper share of other deduc-  
20 tions, expenses, and losses that are not di-  
21 rectly allocable to such receipts or another  
22 class of income.

23 “(2) ALLOCATION METHOD.—The Secretary  
24 shall prescribe rules for the proper allocation of  
25 items of income, deduction, expense, and loss for

1 purposes of determining income attributable to do-  
2 mestic production activities.

3 “(3) SPECIAL RULES FOR DETERMINING  
4 COSTS.—

5 “(A) IN GENERAL.—For purposes of deter-  
6 mining costs under clause (i) of paragraph  
7 (1)(B), any item or service brought into the  
8 United States shall be treated as acquired by  
9 purchase, and its cost shall be treated as not  
10 less than its fair market value immediately  
11 after it entered the United States. A similar  
12 rule shall apply in determining the adjusted  
13 basis of leased or rented property where the  
14 lease or rental gives rise to domestic production  
15 gross receipts.

16 “(B) EXPORTS FOR FURTHER MANUFAC-  
17 TURE.—In the case of any property described  
18 in subparagraph (A) that had been exported by  
19 the taxpayer for further manufacture, the in-  
20 crease in cost or adjusted basis under subpara-  
21 graph (A) shall not exceed the difference be-  
22 tween the value of the property when exported  
23 and the value of the property when brought  
24 back into the United States after the further  
25 manufacture.

1           “(4) MODIFIED TAXABLE INCOME.—The term  
2   ‘modified taxable income’ means taxable income  
3   computed without regard to the deduction allowable  
4   under this section.

5           “(e) DOMESTIC PRODUCTION GROSS RECEIPTS.—  
6 For purposes of this section—

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

10           “(A) any sale, exchange, or other disposi-  
11   tion of, or

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

17           “(2) SPECIAL RULES FOR CERTAIN PROP-  
18   ERTY.—In the case of any qualifying production  
19   property described in subsection (f)(1)(C)—

20           “(A) such property shall be treated for  
21   purposes of paragraph (1) as produced in sig-  
22   nificant part by the taxpayer within the United  
23   States if more than 50 percent of the aggregate  
24   development and production costs are incurred  
25   by the taxpayer within the United States, and

1           “(B) if a taxpayer acquires such property  
2           before such property begins to generate sub-  
3           stantial gross receipts, any development or pro-  
4           duction costs incurred before the acquisition  
5           shall be treated as incurred by the taxpayer for  
6           purposes of subparagraph (A) and paragraph  
7           (1).

8           “(f) QUALIFYING PRODUCTION PROPERTY.—For  
9           purposes of this section—

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

13                   “(A) any tangible personal property,

14                   “(B) any computer software, and

15                   “(C) any property described in section  
16                   168(f) (3) or (4), including any underlying  
17                   copyright or trademark.

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

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

24                   “(B) oil or gas,

25                   “(C) electricity,

1                   “(D) water supplied by pipeline to the con-  
2                   sumer,

3                   “(E) utility services, or

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

8                   “(g) DOMESTIC/WORLDWIDE FRACTION.—For pur-  
9                   poses of this section—

10                   “(1) IN GENERAL.—The term ‘domestic/world-  
11                   wide fraction’ means a fraction (not greater than  
12                   1)—

13                   “(A) the numerator of which is the value  
14                   of the domestic production of the taxpayer, and

15                   “(B) the denominator of which is the value  
16                   of the worldwide production of the taxpayer.

17                   “(2) VALUE OF DOMESTIC PRODUCTION.—The  
18                   value of domestic production is the excess (if any)  
19                   of—

20                   “(A) the domestic production gross re-  
21                   ceipts, over

22                   “(B) the cost of purchased inputs allocable  
23                   to such receipts that are deductible under this  
24                   chapter for the taxable year.

25                   “(3) PURCHASED INPUTS.—

1           “(A) IN GENERAL.—Purchased inputs are  
2           any of the following items acquired by pur-  
3           chase:

4                   “(i) Services (other than services of  
5                   employees) used in manufacture, produc-  
6                   tion, growth, or extraction activities.

7                   “(ii) Items consumed in connection  
8                   with such activities.

9                   “(iii) Items incorporated as part of  
10                  the property being manufactured, pro-  
11                  duced, grown, or extracted.

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

15                 “(4) VALUE OF WORLDWIDE PRODUCTION.—

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

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

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

22                   “(B) WORLDWIDE PRODUCTION GROSS RE-  
23                   CEIPTS.—The worldwide production gross re-  
24                   ceipts is the amount that would be determined  
25                   under subsection (e) if such subsection were ap-

1           plied without any reference to the United  
2           States.

3           “(h) DEFINITIONS AND SPECIAL RULES.—

4           “(1) APPLICATION OF SECTION TO PASS-THRU  
5           ENTITIES.—In the case of an S corporation, partner-  
6           ship, estate or trust, or other pass-thru entity—

7                   “(A) subject to the provisions of paragraph  
8                   (2) and subsection (b)(3)(A), this section shall  
9                   be applied at the shareholder, partner, or simi-  
10                  lar level, and

11                  “(B) the Secretary shall prescribe rules for  
12                  the application of this section, including rules  
13                  relating to—

14                          “(i) restrictions on the allocation of  
15                          the deduction to taxpayers at the partner  
16                          or similar level, and

17                          “(ii) additional reporting require-  
18                          ments.

19           “(2) EXCLUSION FOR PATRONS OF AGRICUL-  
20           TURAL AND HORTICULTURAL COOPERATIVES.—

21                   “(A) IN GENERAL.—If any amount de-  
22                   scribed in paragraph (1) or (3) of section 1385  
23                   (a)—

24                                  “(i) is received by a person from an  
25                                  organization to which part I of subchapter

1 T applies which is engaged in the mar-  
2 keting of agricultural or horticultural prod-  
3 ucts, and

4 “(ii) is allocable to the portion of the  
5 qualified production activities income of  
6 the organization which is deductible under  
7 subsection (a) and designated as such by  
8 the organization in a written notice mailed  
9 to its patrons during the payment period  
10 described in section 1382(d),

11 then such person shall be allowed an exclusion  
12 from gross income with respect to such amount.

13 The taxable income of the organization shall  
14 not be reduced under section 1382 by the por-  
15 tion of any such amount with respect to which  
16 an exclusion is allowable to a person by reason  
17 of this paragraph.

18 “(B) SPECIAL RULES.—For purposes of  
19 applying subparagraph (A), in determining the  
20 qualified production activities income of the or-  
21 ganization under this section—

22 “(i) there shall not be taken into ac-  
23 count in computing the organization’s  
24 modified taxable income any deduction al-  
25 lowable under subsection (b) or (c) of sec-

1                   tion 1382 (relating to patronage dividends,  
2                   per-unit retain allocations, and nonpatron-  
3                   age distributions), and

4                   “(ii) the organization shall be treated  
5                   as having manufactured, produced, grown,  
6                   or extracted in whole or significant part  
7                   any qualifying production property mar-  
8                   keted by the organization which its patrons  
9                   have so manufactured, produced, grown, or  
10                  extracted.

11                 “(3) SPECIAL RULE FOR AFFILIATED  
12                 GROUPS.—

13                 “(A) IN GENERAL.—All members of an ex-  
14                 panded affiliated group shall be treated as a  
15                 single corporation for purposes of this section.

16                 “(B) EXPANDED AFFILIATED GROUP.—  
17                 The term ‘expanded affiliated group’ means an  
18                 affiliated group as defined in section 1504(a),  
19                 determined—

20                 “(i) by substituting ‘50 percent’ for  
21                 ‘80 percent’ each place it appears, and

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

24                 For purposes of determining the domestic/  
25                 worldwide fraction under subsection (g), clause

1 (ii) shall be applied by also disregarding para-  
2 graphs (3) and (8) of section 1504(b).

3 “(4) COORDINATION WITH MINIMUM TAX.—The  
4 deduction under this section shall be allowed for  
5 purposes of the tax imposed by section 55; except  
6 that for purposes of section 55, alternative minimum  
7 taxable income shall be taken into account in deter-  
8 mining the deduction under this section.

9 “(5) ORDERING RULE.—The amount of any  
10 other deduction allowable under this chapter shall be  
11 determined as if this section had not been enacted.

12 “(6) TRADE OR BUSINESS REQUIREMENT.—  
13 This section shall be applied by only taking into ac-  
14 count items which are attributable to the actual con-  
15 duct of a trade or business.

16 “(7) POSSESSIONS, ETC.—

17 “(A) IN GENERAL.—For purposes of sub-  
18 sections (d) and (e), the term ‘United States’  
19 includes the Commonwealth of Puerto Rico,  
20 Guam, American Samoa, the Commonwealth of  
21 the Northern Mariana Islands, and the Virgin  
22 Islands of the United States.

23 “(B) SPECIAL RULES FOR APPLYING WAGE  
24 LIMITATION.—For purposes of applying the

1 limitation under subsection (b) for any taxable  
2 year—

3 “(i) the determination of W-2 wages  
4 of a taxpayer shall be made without regard  
5 to any exclusion under section 3401(a)(8)  
6 for remuneration paid for services per-  
7 formed in a jurisdiction described in sub-  
8 paragraph (A), and

9 “(ii) in determining the amount of  
10 any credit allowable under section 30A or  
11 936 for the taxable year, there shall not be  
12 taken into account any wages which are  
13 taken into account in applying such limita-  
14 tion.

15 “(8) COORDINATION WITH TRANSITION  
16 RULES.—For purposes of this section—

17 “(A) domestic production gross receipts  
18 shall not include gross receipts from any trans-  
19 action if the binding contract transition relief of  
20 section 101(e)(2) of the Jumpstart Our Busi-  
21 ness Strength (JOBS) Act applies to such  
22 transaction, and

23 “(B) any deduction allowed under section  
24 101(e) of such Act shall be disregarded in de-  
25 termining the portion of the taxable income

