

Maria Cantwell

AMENDMENT NO. _____ Calendar No. _____

Purpose: To strike the suspension of the deduction for State and local taxes and to modify the treatment of deferred foreign income upon transition to the participation exemption system.

IN THE SENATE OF THE UNITED STATES—115th Cong., 1st Sess.

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AMENDMENT N^o 1665

By Cantwell Sections II and V
of the Budget for fiscal

To: Amra No 1618
_____ and

11
Page(s) _____

GPO: 2016 22-945 (mac)

_____ CANTWELL
to the amendment (No. _____) proposed by

*Mehendez,
Van Hollen,
Blumenthal
UDALL*

Viz:

- 1 Strike section 11042 and insert the following:
- 2 **SEC. 11042. MODIFICATION OF TREATMENT OF DEFERRED**
- 3 **FOREIGN INCOME UPON TRANSITION TO**
- 4 **PARTICIPATION EXEMPTION SYSTEM OF TAX-**
- 5 **ATION.**
- 6 (a) IN GENERAL.—
- 7 (1) REPEAL OF TREATMENT.—The amend-
- 8 ments made by section 14103 of this Act shall be
- 9 null and void.

1 (2) MODIFIED TREATMENT.—Section 965 of
2 the Internal Revenue Code of 1986 is amended to
3 read as follows:

4 **“SEC. 965. TREATMENT OF DEFERRED FOREIGN INCOME**
5 **UPON TRANSITION TO PARTICIPATION SYS-**
6 **TEM OF TAXATION.**

7 “(a) TREATMENT OF DEFERRED FOREIGN INCOME
8 AS SUBPART F INCOME.—In the case of the last taxable
9 year of a deferred foreign income corporation which begins
10 before January 1, 2018—

11 “(1) all property of such foreign corporation
12 shall be treated as sold on the last day of such tax-
13 able year for its fair market value, and, notwith-
14 standing any other provision of this title, any gain
15 or loss arising from such sale shall be taken into ac-
16 count for such taxable year to the extent otherwise
17 provided by this title (except that section 1091 shall
18 not apply to any such loss), and

19 “(2) the subpart F income of such foreign cor-
20 poration (as otherwise determined for such taxable
21 year under section 952 without regard to this para-
22 graph and after application of paragraph (1)) shall
23 be increased by the accumulated post-1986 deferred
24 foreign income of such corporation determined as of
25 the close of such taxable year.

1 Proper adjustments shall be made in the amount of any
2 gain or loss subsequently realized for gain or loss taken
3 into account under paragraph (1).

4 “(b) REDUCTION IN TAX RATE.—In the case of a
5 United States shareholder of a deferred foreign income
6 corporation, there shall be allowed as a deduction for the
7 taxable year in which an amount is included in the gross
8 income of such United States shareholder under section
9 951(a)(1) by reason of subsection (a)(2) an amount equal
10 to 43 percent of the amount so included in income.

11 “(c) ACCUMULATED POST-1986 DEFERRED FOR-
12 EIGN INCOME.—For purposes of this section—

13 “(1) IN GENERAL.—The term ‘accumulated
14 post-1986 deferred foreign income’ means the post-
15 1986 earnings and profits except to the extent such
16 earnings—

17 “(A) are attributable to income of the de-
18 ferred foreign income corporation which is ef-
19 fectively connected with the conduct of a trade
20 or business within the United States and sub-
21 ject to tax under this chapter,

22 “(B) if distributed, would be excluded from
23 the gross income of a United States shareholder
24 under section 959, or

1 “(C) in the case of any deferred foreign in-
2 come corporation described in subsection
3 (d)(1)(B) and which is a passive foreign invest-
4 ment company (as defined in section 1297)—

5 “(i) if distributed, would have been
6 treated as a distribution which is not a div-
7 idend, or

8 “(ii) would have been properly attrib-
9 utable to an unreversed inclusion of a
10 United States person under section 1296.

11 To the extent provided in regulations or other guid-
12 ance prescribed by the Secretary, in the case of any
13 controlled foreign corporation which has share-
14 holders which are not United States shareholders,
15 accumulated post-1986 deferred foreign income shall
16 be appropriately reduced by amounts which would be
17 described in subparagraph (B) if such shareholders
18 were United States shareholders. Such regulations
19 or other guidance may provide a similar rule for
20 purposes of subparagraph (C).

21 “(2) POST-1986 EARNINGS AND PROFITS.—The
22 term ‘post-1986 earnings and profits’ means the
23 earnings and profits of the foreign corporation (com-
24 puted in accordance with sections 964(a) and 986)

1 accumulated in taxable years beginning after Decem-
2 ber 31, 1986, and determined—

3 “(A) as of the close the taxable year re-
4 ferred to in subsection (a) and after application
5 of subsection (a)(1), and

6 “(B) without diminution by reason of divi-
7 dends distributed during such taxable year.

8 “(d) DEFERRED FOREIGN INCOME CORPORATION.—

9 “(1) IN GENERAL.—For purposes of this sec-
10 tion, the term ‘deferred foreign income corporation’
11 means—

12 “(A) any controlled foreign corporation,
13 and

14 “(B) any section 902 corporation (as de-
15 fined in section 909(d)(5) as in effect before the
16 date of the enactment of the Tax Cuts and Jobs
17 Act).

18 “(2) APPLICATION TO SECTION 902 CORPORA-
19 TIONS.—

20 “(A) IN GENERAL.—For purposes of sec-
21 tion 951, a section 902 corporation (as so de-
22 fined) shall be treated as a controlled foreign
23 corporation solely for purposes of taking into
24 account the subpart F income of such corpora-
25 tion under subsection (a), making proper ad-

1 justments in the amount of subsequent gains or
2 losses to reflect such gains and losses (including
3 through application of section 961), and apply-
4 ing subsection (f).

5 “(B) UNITED STATES SHAREHOLDER.—
6 For purposes of this section and the application
7 of subparagraph (A), in the case of a section
8 902 corporation (as so defined), a shareholder
9 which is a domestic corporation which owns 10
10 percent or more of the voting stock of such sec-
11 tion 902 corporation shall be treated as a
12 United States shareholder.

13 “(e) DISALLOWANCE OF FOREIGN TAX CREDIT,
14 ETC.—

15 “(1) IN GENERAL.—No credit shall be allowed
16 under section 901 for the applicable percentage of
17 the taxes paid or accrued (or treated as paid or ac-
18 crued) with respect to any amount which is included
19 in gross income under section 951(a) by reason of
20 subsection (a).

21 “(2) APPLICABLE PERCENTAGE.—For purposes
22 of paragraph (1), the applicable percentage is the
23 amount (expressed as a percentage) equal to 0.43
24 multiplied by the ratio of—

1 “(A) the amount included in gross income
2 under section 951(a) by reason of subsection
3 (a)(2), to

4 “(B) the amount included in gross income
5 under section 951(a) by reason of subsection
6 (a).

7 “(3) DENIAL OF DEDUCTION.—No deduction
8 shall be allowed under this chapter for the portion
9 of any tax for which credit is not allowable under
10 section 901 by reason of paragraph (1) (determined
11 by treating the taxpayer as having elected the bene-
12 fits of subpart A of part III of subchapter N).

13 “(4) COORDINATION WITH SECTION 78.—Sec-
14 tion 78 shall not apply to any tax for which credit
15 is not allowable under section 901 by reason of para-
16 graph (1).

17 “(f) ELECTION TO PAY LIABILITY IN INSTALL-
18 MENTS.—

19 “(1) IN GENERAL.—In the case of a United
20 States shareholder of a deferred foreign income cor-
21 poration, such United States shareholder may elect
22 to pay the net tax liability under this section in 8
23 installments of the following amounts:

1 “(A) 8 percent of the net tax liability in
2 the case of each of the first 5 of such install-
3 ments,

4 “(B) 15 percent of the net tax liability in
5 the case of the 6th such installment,

6 “(C) 20 percent of the net tax liability in
7 the case of the 7th such installment, and

8 “(D) 25 percent of the net tax liability in
9 the case of the 8th such installment.

10 “(2) DATE FOR PAYMENT OF INSTALLMENTS.—

11 If an election is made under paragraph (1), the first
12 installment shall be paid on the due date (deter-
13 mined without regard to any extension of time for
14 filing the return) for the return of tax for the tax-
15 able year described in subsection (a) and each suc-
16 ceeding installment shall be paid on the due date (as
17 so determined) for the return of tax for the taxable
18 year following the taxable year with respect to which
19 the preceding installment was made.

20 “(3) ACCELERATION OF PAYMENT.—If there is
21 an addition to tax for failure to pay timely assessed
22 with respect to any installment required under this
23 subsection, a liquidation or sale of substantially all
24 the assets of the taxpayer (including in a title 11 or
25 similar case), a cessation of business by the tax-

1 payer, or any similar circumstance, then the unpaid
2 portion of all remaining installments shall be due on
3 the date of such event (or in the case of a title 11
4 or similar case, the day before the petition is filed).
5 The preceding sentence shall not apply to the sale
6 of substantially all the assets of a taxpayer to a
7 buyer if such buyer enters into an agreement with
8 the Secretary under which such buyer is liable for
9 the remaining installments due under this subsection
10 in the same manner as if such buyer were the tax-
11 payer.

12 “(4) PRORATION OF DEFICIENCY TO INSTALL-
13 MENTS.—If an election is made under paragraph (1)
14 to pay the net tax liability under this section in in-
15 stallments and a deficiency has been assessed with
16 respect to such net tax liability, the deficiency shall
17 be prorated to the installments payable under para-
18 graph (1). The part of the deficiency so prorated to
19 any installment the date for payment of which has
20 not arrived shall be collected at the same time as,
21 and as a part of, such installment. The part of the
22 deficiency so prorated to any installment the date
23 for payment of which has arrived shall be paid upon
24 notice and demand from the Secretary. This sub-
25 section shall not apply if the deficiency is due to

1 negligence, to intentional disregard of rules and reg-
2 ulations, or to fraud with intent to evade tax.

3 “(5) ELECTION.—Any election under paragraph
4 (1) shall be made not later than the due date for the
5 return of tax for the taxable year described in sub-
6 section (a) and shall be made in such manner as the
7 Secretary may provide.

8 “(6) NET TAX LIABILITY UNDER THIS SEC-
9 TION.—For purposes of this subsection—

10 “(A) IN GENERAL.—The net tax liability
11 under this section with respect to any United
12 States shareholder is the excess (if any) of—

13 “(i) such taxpayer’s net income tax
14 for the taxable year described in subsection
15 (a), over

16 “(ii) such taxpayer’s net income tax
17 for such taxable year determined without
18 regard to this section.

19 “(B) NET INCOME TAX.—The term ‘net
20 income tax’ means the regular tax liability re-
21 duced by the credits allowed under subparts A,
22 B, and D of part IV of subchapter A.

23 “(g) REGULATIONS.—The Secretary may prescribe
24 such regulations or other guidance as may be necessary
25 or appropriate to carry out the provisions of this section,

1 including rules to disregard any transfer of properties or
2 liabilities (including by contribution and distribution) a
3 substantial purpose of which is the avoidance of the pur-
4 poses of this section.”.

5 (b) CLERICAL AMENDMENT.—The table of section
6 for subpart F of part III of subchapter N of chapter 1
7 of such Code is amended by striking the item relating to
8 section 965 and inserting the following:

“Sec. 965. Treatment of deferred foreign income upon transition to participa-
tion exemption system of taxation.”.