

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 1173

To amend the Internal Revenue Code of 1986 to allow a corporation to elect the pooling method of determining foreign tax credits in certain cases, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

AUGUST 10 (legislative day, JULY 10), 1995

Mr. GREGG (for himself and Mr. SMITH) 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 allow a corporation to elect the pooling method of determining foreign tax credits in certain cases, and for other purposes.

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. ELECTION OF POOLING METHOD OF DETER-**  
4                       **MINING FOREIGN TAX CREDIT IN CERTAIN**  
5                       **CASES.**

6       (a) IN GENERAL.—Section 902(c) of the Internal  
7       Revenue Code of 1986 is amended by redesignating para-

1 graph (7) as paragraph (8) and by inserting after para-  
2 graph (6) the following new paragraph:

3 “(7) SPECIAL RULE WHERE DOMESTIC COR-  
4 PORATION ACQUIRES 80 PERCENT OF FOREIGN COR-  
5 PORATION BEFORE DECEMBER 31, 1986.—

6 “(A) IN GENERAL.—For purposes of ap-  
7 plying subsection (a), if a domestic corporation  
8 elects the application of this paragraph in ac-  
9 cordance with subparagraph (B) and if the  
10 ownership requirement of subparagraph (C) is  
11 met with respect to any foreign corporation, the  
12 post-1986 undistributed earnings and the post-  
13 1986 foreign income taxes of such foreign cor-  
14 poration shall be determined by taking into ac-  
15 count the amount of earnings and profits of the  
16 foreign corporation (computed in accordance  
17 with sections 964(a) and 986) accumulated in,  
18 and the amount of foreign income taxes of such  
19 foreign corporation paid with respect to, all pe-  
20 riods beginning on and after the 1st day of the  
21 1st taxable year in which such ownership re-  
22 quirement is met.

23 “(B) IRREVOCABLE ELECTION.—A domes-  
24 tic corporation shall make the election allowed

1 under this paragraph in such manner as the  
2 Secretary shall prescribe. Such election—

3 “(i) shall be made on or before the  
4 due date (including extensions) for filing  
5 the return of tax for the taxable year for  
6 which the election is being made,

7 “(ii) shall apply to each foreign cor-  
8 poration with respect to which the domes-  
9 tic corporation may apply the rules of sec-  
10 tion 902(a), and

11 “(iii) once made, shall be irrevocable  
12 for all subsequent taxable years.

13 “(C) OWNERSHIP REQUIREMENT.—The  
14 ownership requirement of this subparagraph is  
15 met with respect to any foreign corporation if  
16 the domestic corporation owns within the mean-  
17 ing of section 958(a), or is considered as own-  
18 ing by applying the rules of ownership of sec-  
19 tion 958(b), 80 percent or more of the total  
20 combined voting power of all classes of stock  
21 entitled to vote of such foreign corporation.”.

22 (b) EFFECTIVE DATES.—

23 (1) IN GENERAL.—The amendments made by  
24 this section shall apply with respect to taxable years  
25 beginning after December 31, 1986.

1           (2) TIME FOR FILING ELECTION WHEN RETURN  
2       FILED.—For any taxable year beginning after De-  
3       cember 31, 1986, with respect to which a domestic  
4       corporation has filed a return of income tax imposed  
5       under chapter 1 of the Internal Revenue Code of  
6       1986 prior to the date of enactment of this Act, a  
7       domestic corporation may make the election allowed  
8       under section 902(c)(7) of the Internal Revenue  
9       Code of 1986 within 120 days of the date of enact-  
10      ment of this Act, but only if for such taxable year  
11      any one or more of the following conditions exists:

12           (A) The period of limitations for assess-  
13      ment and collection, as defined in section  
14      6501(a) of such Code, has not expired.

15           (B) If the limitations period described in  
16      paragraph (1) has been extended by agreement  
17      between the Secretary and the taxpayer pursu-  
18      ant to section 6501(c)(4) of such Code, such ex-  
19      tended period has not expired.

20           (C) The period of limitations for filing a  
21      claim for refund pursuant to section 6511(a) of  
22      such Code has not expired.

23           (D) The proper amount of tax due for the  
24      taxable year is the subject of a petition to the  
25      Tax Court pursuant to section 6213 of such

1 Code and a decision of the Tax Court on the  
2 merits of the petition, if any, has not yet be-  
3 come final.

4 (E) The proper amount of tax due for the  
5 taxable year is the subject of a civil action for  
6 refund before a Federal district pursuant to  
7 section 1346(a) of title 28, United States Code,  
8 or before the Federal Court of Claims pursuant  
9 to section 1491(a)(1) of such title, and a deci-  
10 sion on the merits of the refund action, if any,  
11 has not yet become final.

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