

106TH CONGRESS
2D SESSION

S. 3103

To amend the Internal Revenue Code of 1986 to impose a discriminatory profits tax on pharmaceutical companies which charge prices for prescription drugs to domestic wholesale distributors that exceed the most favored customer prices charged to foreign wholesale distributors.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 25 (legislative day, SEPTEMBER 22), 2000

Mr. LEVIN (for himself and Mr. BRYAN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to impose a discriminatory profits tax on pharmaceutical companies which charge prices for prescription drugs to domestic wholesale distributors that exceed the most favored customer prices charged to foreign wholesale distributors.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. IMPOSITION OF DISCRIMINATORY PROFITS**
 2 **TAX ON CERTAIN PRESCRIPTION DRUG MAN-**
 3 **UFACTURERS.**

4 (a) IN GENERAL.—Subtitle D of the Internal Rev-
 5 enue Code of 1986 (relating to miscellaneous excise taxes)
 6 is amended by inserting after chapter 44 the following:

7 **“CHAPTER 45—DISCRIMINATORY PROFITS**
 8 **TAX ON CERTAIN PRESCRIPTION**
 9 **DRUG MANUFACTURERS**

“Sec. 4986. Imposition of tax.

10 **“SEC. 4986. IMPOSITION OF TAX.**

11 “(a) IN GENERAL.—There is imposed on any tax-
 12 payer who—

13 “(1) has any gross income attributable to the
 14 manufacture or production of prescription drugs for
 15 any taxable year, and

16 “(2) fails to include with its return of tax for
 17 such taxable year a statement (in such form and
 18 manner as the Secretary may prescribe) which—

19 “(A) declares the taxpayer’s policy that it
 20 does not directly or indirectly charge any whole-
 21 sale distributor located in the United States a
 22 higher unit price for any bulk purchase of a
 23 prescription drug than the most favored cus-
 24 tomer price it directly or indirectly charges any
 25 wholesale distributor located in any covered for-

1 eign country for any bulk purchase of such
2 drug, and

3 “(B) is signed, under penalty of perjury,
4 by the chief financial officer or other senior cor-
5 porate officer with knowledge of the facts,
6 a tax equal to 10 percent of the taxable income of the
7 taxpayer.

8 “(b) DEFINITIONS.—For purposes of this section—

9 “(1) COVERED FOREIGN COUNTRY.—The term
10 ‘covered foreign country’ means Canada and any
11 country which is a member of the European Union.

12 “(2) MOST FAVORED CUSTOMER PRICE.—The
13 term ‘most favored customer price’ means, with re-
14 spect to any prescription drug, a unit price equal
15 to—

16 “(A) the best unit price given or available
17 to any wholesale distributor with respect to bulk
18 purchases of such drug if the terms and condi-
19 tions applicable to such purchases are com-
20 parable, or

21 “(B) the best unit price given or available
22 to any wholesale distributor with respect to bulk
23 purchases of such drug with a differential based
24 entirely on costs attributable to differences in
25 the terms and conditions applicable to such

1 purchases if such terms and conditions are not
 2 comparable.”.

3 (b) DEDICATION OF TAX TO FEDERAL HOSPITAL IN-
 4 SURANCE TRUST FUND.—Section 1817(a) of the Social
 5 Security Act (42 U.S.C. 1395i(a)) is amended—

6 (1) by striking “and” at the end of paragraph
 7 (1),

8 (2) by striking the period at the end of para-
 9 graph (2) and inserting “; and”, and

10 (3) by adding at the end the following new
 11 paragraph:

12 “(3) the taxes imposed by section 4986 of the
 13 Internal Revenue Code of 1986.”.

14 (c) CLERICAL AMENDMENT.—The table of chapters
 15 of subtitle D of the Internal Revenue Code of 1986 is
 16 amended by inserting after the item relating to chapter
 17 44 the following:

“CHAPTER 45. Discriminatory profits tax on certain prescription
 drug manufacturers.”.

18 (d) EFFECTIVE DATE.—The amendments made by
 19 this section shall apply to taxable years beginning after
 20 the date of the enactment of this Act.

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