

109TH CONGRESS
1ST SESSION

S. 1327

To amend the Internal Revenue Code of 1986 to modify the active business definition under section 355.

IN THE SENATE OF THE UNITED STATES

JUNE 29, 2005

Mr. LOTT (for himself and Mr. BAUCUS) 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 modify the active business definition under section 355.

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. MODIFICATION OF ACTIVE BUSINESS DEFINI-**

4 **TION UNDER SECTION 355.**

5 (a) IN GENERAL.—Section 355(b) of the Internal
6 Revenue Code of 1986 (defining active conduct of a trade
7 or business) is amended by adding at the end the following
8 new paragraph:

9 “(3) SPECIAL RULES RELATING TO ACTIVE
10 BUSINESS REQUIREMENT.—

1 “(A) IN GENERAL.—For purposes of deter-
2 mining whether a corporation meets the re-
3 quirement of paragraph (2)(A), all members of
4 such corporation’s separate affiliated group
5 shall be treated as one corporation. For pur-
6 poses of the preceding sentence, a corporation’s
7 separate affiliated group is the affiliated group
8 which would be determined under section
9 1504(a) if such corporation were the common
10 parent and section 1504(b) did not apply.

11 “(B) CONTROL.—For purposes of para-
12 graph (2)(D), all distributee corporations which
13 are members of the same affiliated group (as
14 defined in section 1504(a) without regard to
15 section 1504(b)) shall be treated as one dis-
16 tributee corporation.”.

17 (b) CONFORMING AMENDMENTS.—

18 (1) Subparagraph (A) of section 355(b)(2) of
19 the Internal Revenue Code of 1986 is amended to
20 read as follows:

21 “(A) it is engaged in the active conduct of
22 a trade or business,”.

23 (2) Section 355(b)(2) of such Code is amended
24 by striking the last sentence.

25 (c) EFFECTIVE DATE.—

1 (1) IN GENERAL.—The amendments made by
2 this section shall apply—

3 (A) to distributions after the date of the
4 enactment of this Act, and

5 (B) for purposes of determining the contin-
6 ued qualification under section 355(b)(2)(A) of
7 the Internal Revenue Code of 1986 (as amend-
8 ed by subsection (b)(1)) of distributions made
9 before such date, as a result of an acquisition,
10 disposition, or other restructuring after such
11 date.

12 (2) TRANSITION RULE.—The amendments
13 made by this section shall not apply to any distribu-
14 tion pursuant to a transaction which is—

15 (A) made pursuant to an agreement which
16 was binding on such date of enactment and at
17 all times thereafter,

18 (B) described in a ruling request submitted
19 to the Internal Revenue Service on or before
20 such date, or

21 (C) described on or before such date in a
22 public announcement or in a filing with the Se-
23 curities and Exchange Commission.

24 (3) ELECTION TO HAVE AMENDMENTS
25 APPLY.—Paragraph (2) shall not apply if the dis-

- 1 tributing corporation elects not to have such para-
- 2 graph apply to distributions of such corporation.
- 3 Any such election, once made, shall be irrevocable.

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