

116TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

To amend the Internal Revenue Code of 1986 to provide a credit for economic activity in possessions of the United States.

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IN THE SENATE OF THE UNITED STATES

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

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**A BILL**

To amend the Internal Revenue Code of 1986 to provide a credit for economic activity in possessions of the United States.

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. SHORT TITLE.**

4 This Act may be cited as the “Territory Economic  
5 Development Tax Credit Act”.

6 **SEC. 2. CREDIT FOR ECONOMIC ACTIVITY IN POSSESSIONS**  
7 **OF THE UNITED STATES.**

8 (a) IN GENERAL.—Subpart B of part IV of sub-  
9 chapter A of chapter 1 of the Internal Revenue Code of

1 1986 is amended by adding at the end the following new  
2 section:

3 **“SEC. 30E. POSSESSION ECONOMIC ACTIVITY CREDIT.**

4 “(a) ALLOWANCE OF CREDIT.—

5 “(1) IN GENERAL.—Except as otherwise pro-  
6 vided in this section, in the case of a qualified do-  
7 mestic corporation, there shall be allowed as a credit  
8 against the tax imposed by this chapter an amount  
9 equal to the amount determined under paragraph  
10 (2).

11 “(2) DETERMINATION OF AMOUNT.—The  
12 amount determined under this paragraph is—

13 “(A) in the case of a qualified domestic  
14 corporation described in subsection (b)(1)(A),  
15 the lesser of—

16 “(i) the portion of the tax which is at-  
17 tributable to the taxable income, from  
18 sources without the United States, from—

19 “(I) the active conduct of a trade  
20 or business within a possession of the  
21 United States, or

22 “(II) the sale or exchange of sub-  
23 stantially all of the assets used by the  
24 taxpayer in the active conduct of such  
25 trade or business, or



1                   “(ii) is wholly owned by corporations  
2                   which are members of the same affiliated  
3                   group as such United States shareholder.

4                   “(2) QUALIFIED CORPORATION.—The term  
5                   ‘qualified corporation’ means any corporation if such  
6                   corporation meets the following requirements:

7                   “(A) SOURCE QUALIFICATION.—80 percent  
8                   or more of the gross income of the corporation  
9                   for the 3-year period immediately preceding the  
10                  close of the taxable year (or for such part of  
11                  such period immediately preceding the close of  
12                  such taxable year as may be applicable) was de-  
13                  rived from sources within a possession of the  
14                  United States (determined without regard to  
15                  section 904(f)).

16                  “(B) TRADE OR BUSINESS QUALIFICA-  
17                  TION.—75 percent or more of the gross income  
18                  of the corporation for such period or such part  
19                  thereof was derived from the active conduct of  
20                  a trade or business within a possession of the  
21                  United States.

22                  “(3) SPECIAL RULE FOR SEPARATE AND  
23                  CLEARLY IDENTIFIED UNITS OF FOREIGN CORPORA-  
24                  TIONS.—

1           “(A) IN GENERAL.—In the case of a  
2 United States shareholder of a foreign corpora-  
3 tion which—

4                   “(i) is not a qualified corporation but  
5 with respect to which the ownership re-  
6 quirements of paragraph (1)(B)(ii) are  
7 met, and

8                   “(ii) has an eligible foreign business  
9 unit which, if such unit were a corporation,  
10 would be a qualified corporation with re-  
11 spect to which such ownership require-  
12 ments would be met,

13 then, for purposes of this section, the United  
14 States shareholder may elect to treat such unit  
15 as a separate foreign corporation which meets  
16 the requirements of paragraph (1)(B) and with  
17 respect to which such shareholder is a United  
18 States shareholder.

19           “(B) ELIGIBLE FOREIGN BUSINESS  
20 UNIT.—For purposes of this paragraph, the  
21 term ‘eligible foreign business unit’ means a  
22 separate and clearly identified foreign unit of a  
23 trade or business, including a partnership or an  
24 entity treated as disregarded as a separate enti-  
25 ty from its owner (under section 7701 or other

1 provision under this title), which maintains sep-  
2 arate books and records.

3 “(C) SPECIAL ELECTION FOR AFFILIATED  
4 GROUPS.—In the case of an affiliated group de-  
5 scribed in paragraph (1)(B)(ii), the election  
6 under subparagraph (A) with respect to any eli-  
7 gible foreign business unit shall be made by the  
8 common parent of such group and shall apply  
9 uniformly to all members of such group which  
10 are United States shareholders with respect to  
11 the foreign corporation which has such unit.

12 “(c) WAGE AND ASSET LIMITATION.—

13 “(1) IN GENERAL.—The wage and asset limita-  
14 tion with respect to any qualified corporation for any  
15 taxable year is an amount equal to the sum of the  
16 following amounts:

17 “(A) 40 percent of the sum of—

18 “(i) the aggregate amount of the  
19 qualified corporation’s qualified possession  
20 wages for such taxable year, plus

21 “(ii) the allocable employee fringe  
22 benefit expenses of the qualified corpora-  
23 tion for such taxable year.

1           “(B) 25 percent of the depreciation allow-  
2           ances for the taxable year with respect to quali-  
3           fied tangible property.

4           “(C) In the case of a qualified domestic  
5           corporation described in subsection (b)(1)(A),  
6           the amount of the possession income taxes for  
7           the taxable year attributable to income de-  
8           scribed in subsection (a)(2)(A)(i).

9           “(2) QUALIFIED POSSESSION WAGES.—For  
10          purposes of this section—

11           “(A) IN GENERAL.—The term ‘qualified  
12           possession wages’ means wages paid or incurred  
13           by the qualified corporation during the taxable  
14           year in connection with the active conduct of a  
15           trade or business within a possession of the  
16           United States to any employee for services per-  
17           formed in such possession, but only if such  
18           services are performed while the principal place  
19           of employment of such employee is within such  
20           possession.

21           “(B) LIMITATION ON AMOUNT OF WAGES  
22           TAKEN INTO ACCOUNT.—

23           “(i) IN GENERAL.—The amount of  
24           wages which may be taken into account  
25           under subparagraph (A) with respect to

1 any employee for any taxable year shall  
2 not exceed the contribution and benefit  
3 base determined under section 230 of the  
4 Social Security Act for the calendar year  
5 in which such taxable year begins.

6 “(ii) TREATMENT OF PART-TIME EM-  
7 PLOYEES, ETC.—If—

8 “(I) any employee is not em-  
9 ployed by the qualified corporation on  
10 a substantially full-time basis at all  
11 times during the taxable year, or

12 “(II) the principal place of em-  
13 ployment of any employee with the  
14 qualified corporation is not within a  
15 possession at all times during the tax-  
16 able year,

17 the limitation applicable under clause (i)  
18 with respect to such employee shall be the  
19 appropriate portion (as determined by the  
20 Secretary) of the limitation which would  
21 otherwise be in effect under clause (i).

22 “(C) TREATMENT OF CERTAIN EMPLOY-  
23 EES.—The term ‘qualified possession wages’  
24 shall not include any wages paid to employees  
25 who are assigned by the employer to perform

1 services for another person, unless the principal  
2 trade or business of the employer is to make  
3 employees available for temporary periods to  
4 other persons in return for compensation. All  
5 qualified corporations treated as 1 corporation  
6 under subsection (f)(1) shall be treated as 1  
7 employer for purposes of the preceding sen-  
8 tence.

9 “(D) WAGES.—

10 “(i) IN GENERAL.—Except as pro-  
11 vided in clause (ii), the term ‘wages’ has  
12 the meaning given to such term by sub-  
13 section (b) of section 3306 (determined  
14 without regard to any dollar limitation  
15 contained in such section). For purposes of  
16 the preceding sentence, such subsection (b)  
17 shall be applied as if the term ‘United  
18 States’ included all possessions of the  
19 United States.

20 “(ii) SPECIAL RULE FOR AGRICUL-  
21 TURAL LABOR AND RAILWAY LABOR.—In  
22 any case to which subparagraph (A) or (B)  
23 of paragraph (1) of section 51(h) applies,  
24 the term ‘wages’ has the meaning given to  
25 such term by section 51(h)(2).

1           “(3) ALLOCABLE EMPLOYEE FRINGE BENEFIT  
2           EXPENSES.—

3           “(A) IN GENERAL.—The allocable em-  
4           ployee fringe benefit expenses of any qualified  
5           corporation for any taxable year is an amount  
6           which bears the same ratio to the amount de-  
7           termined under subparagraph (B) for such tax-  
8           able year as—

9                   “(i) the aggregate amount of the  
10                   qualified corporation’s qualified possession  
11                   wages for such taxable year, bears to

12                   “(ii) the aggregate amount of the  
13                   wages paid or incurred by such qualified  
14                   corporation during such taxable year.

15           In no event shall the amount determined under  
16           the preceding sentence exceed 15 percent of the  
17           amount referred to in clause (i).

18           “(B) EXPENSES TAKEN INTO ACCOUNT.—  
19           For purposes of subparagraph (A), the amount  
20           determined under this subparagraph for any  
21           taxable year is the aggregate amount allowable  
22           (or, in the case of a foreign corporation, which  
23           would be allowable if such foreign corporation  
24           were a domestic corporation) as a deduction

1 under this chapter to the qualified corporation  
2 for such taxable year with respect to—

3 “(i) employer contributions under a  
4 stock bonus, pension, profit-sharing, or an-  
5 nuity plan,

6 “(ii) employer-provided coverage  
7 under any accident or health plan for em-  
8 ployees, and

9 “(iii) the cost of life or disability in-  
10 surance provided to employees.

11 Any amount treated as wages under paragraph  
12 (2)(D) shall not be taken into account under  
13 this subparagraph.

14 “(4) DEPRECIATION RULES.—For purposes of  
15 this section—

16 “(A) DEPRECIATION ALLOWANCES.—The  
17 term ‘depreciation allowances’ means the depre-  
18 ciation deductions allowable (or, in the case of  
19 a foreign corporation, which would be allowable  
20 if such foreign corporation were a domestic cor-  
21 poration) under section 167 to the qualified cor-  
22 poration.

23 “(B) QUALIFIED TANGIBLE PROPERTY.—  
24 The term ‘qualified tangible property’ means  
25 any tangible property—





1 purposes of determining the amounts  
2 under paragraphs (2)(B) and (3)  
3 thereof.

4 “(B) POSSESSION INTANGIBLE LOW-TAXED  
5 INCOME AMOUNT.—The possession intangible  
6 low-taxed income amount is equal to the  
7 amount of global intangible low-taxed income  
8 (as defined in section 951A(b)) for the taxable  
9 year, determined—

10 “(i) by only taking into account in-  
11 come from the active conduct of a trade or  
12 business and from sources (determined  
13 under rules similar to the rules of part I  
14 of chapter N) within possessions of the  
15 United States for purposes of determining  
16 the tested income and tested loss, and

17 “(ii) for purposes of determining the  
18 qualified business asset investment, by only  
19 taking into account specified tangible prop-  
20 erty which is predominantly used—

21 “(I) in the production of income  
22 described in clause (i), and

23 “(II) in possessions of the United  
24 States.

1           “(C) POSSESSION ILTI DEDUCTION.—The  
2           possession ILTI deduction is 50 percent (37.5  
3           percent in the case of taxable years beginning  
4           after December 31, 2025) of—

5                   “(i) the possession intangible low-  
6                   taxed income amount (if any) for such tax-  
7                   able year, and

8                   “(ii) the amount which would be  
9                   treated as a dividend under section 78 if  
10                  only amounts attributable to the amount  
11                  described in clause (i) were taken into ac-  
12                  count.

13           Rules similar to the rules of section 250(a)(2)  
14           (applied by substituting ‘possession intangible  
15           low-taxed income amount (as defined in section  
16           30E(d)(2)(B))’ for ‘global intangible low-taxed  
17           income amount’ in subsection (a)(1)(B)(i) for  
18           purposes of determining the amount described  
19           and taken into account therein) shall apply for  
20           purposes of this subparagraph.

21           “(3) GLOBAL INTANGIBLE LOW-TAXED INCOME  
22           TAX AMOUNT.—For purposes of this subsection, the  
23           global intangible low-taxed income tax amount is an  
24           amount equal to the excess of—

25                   “(A) the product of—

1                   “(i) the rate in effect under section 11  
2                   for the taxable year, and

3                   “(ii) the sum of global intangible low-  
4                   taxed income amount determined under  
5                   section 951A(b) for such taxable year and  
6                   the amount which would be treated as a  
7                   dividend under section 78 if only amounts  
8                   attributable to such global intangible low-  
9                   taxed income amount were taken into ac-  
10                  count under such section for such taxable  
11                  year, reduced by an amount equal to the  
12                  amount determined under section  
13                  250(a)(1)(B), over

14                  “(B) an amount equal to the amount de-  
15                  scribed in section 960(d) (determined after the  
16                  application of section 904).

17                  “(e) POSSESSION.—The term ‘possession of the  
18                  United States’ includes the Commonwealth of Puerto Rico  
19                  and the Virgin Islands.

20                  “(f) CREDIT NOT ALLOWED AGAINST CERTAIN  
21                  TAXES.—The credit provided by subsection (a) shall not  
22                  be allowed against the tax imposed by—

23                  “(1) section 531 (relating to the tax on accu-  
24                  mulated earnings),



1 is equal to the amount of such allow-  
2 ances taken into account under sub-  
3 section (c)(1)(B), and

4 “(ii) any tax of a foreign country or  
5 a possession of the United States which is  
6 paid or accrued with respect to taxable in-  
7 come which is taken into account in com-  
8 puting the credit under subsection  
9 (a)(2)(A) shall not be treated as income,  
10 war profits, or excess profits taxes paid or  
11 accrued to a foreign country or possession  
12 of the United States, and no deduction  
13 shall be allowed under this title with re-  
14 spect to any amounts so paid or accrued.

15 “(B) CONTROLLED FOREIGN CORPORA-  
16 TIONS.—In the case of a qualified domestic cor-  
17 poration described in subsection (b)(1)(B), for  
18 purposes of determining tested income or tested  
19 loss under section 951A—

20 “(i) the deductions described in sec-  
21 tion 951A(c)(2)(A)(ii) attributable to  
22 wages shall be reduced by the amounts de-  
23 scribed in subparagraph (A)(i)(I),

24 “(ii) the deductions described in sec-  
25 tion 951A(c)(2)(A)(ii) attributable to em-

1           employee fringe benefit expenses shall be re-  
2           duced by the amounts described in sub-  
3           paragraph (A)(i)(II), and

4                   “(iii) the deductions described in sec-  
5           tion 951A(c)(2)(A)(ii) attributable to de-  
6           preciation allowances shall be reduced by  
7           the amounts described in subparagraph  
8           (A)(i)(III).

9                   “(2) CARRYOVER OF CERTAIN UNUSED LIMITA-  
10          TION.—

11                   “(A) BRANCHES.—

12                           “(i) IN GENERAL.—In the case of a  
13           qualified domestic corporation described in  
14           subsection (b)(1)(A), if the wage and asset  
15           limitation with respect to such corporation  
16           exceeds the amount described in subsection  
17           (a)(2)(A)(i), then such excess shall be a  
18           carryover to the first preceding taxable  
19           year and to any of the first 10 succeeding  
20           taxable years, in that order, and, subject to  
21           the limitations of clause (ii), shall be added  
22           to the wage and asset limitation for the  
23           taxable year to which it is carried.

24                           “(ii) LIMITATION.—The unused  
25           amount which may be taken into account

1 under clause (i) for any taxable year shall  
2 not exceed the amount (if any) by which  
3 the amount described in subsection  
4 (a)(2)(A)(i) for such taxable year exceeds  
5 the sum of—

6 “(I) the wage and asset limita-  
7 tion with respect to such corporation  
8 for such taxable year determined with-  
9 out regard to this paragraph, and

10 “(II) the amounts which, by rea-  
11 son of this paragraph, are carried to  
12 such taxable year and are attributable  
13 to taxable years before the unused  
14 amount.

15 “(B) CONTROLLED FOREIGN CORPORA-  
16 TIONS.—

17 “(i) IN GENERAL.—In the case of a  
18 qualified domestic corporation described in  
19 subsection (b)(1)(B), if the amount de-  
20 scribed in subsection (a)(2)(B)(ii) for any  
21 taxable year exceeds the intangible low-  
22 taxed income tax amount, then such excess  
23 shall be a carryover to the first preceding  
24 taxable year and to any of the first 10 suc-  
25 ceeding taxable years, in that order, and,

1 subject to the limitations of clause (ii),  
2 shall be added to the amount described in  
3 subsection (a)(2)(B)(ii) for the taxable  
4 year to which it is carried.

5 “(ii) LIMITATION.—The unused  
6 amount which may be taken into account  
7 under clause (i) for any taxable year shall  
8 not exceed the amount (if any) by which  
9 the intangible low-taxed income tax  
10 amount for such taxable year exceeds the  
11 sum of—

12 “(I) the amount described in sub-  
13 section (a)(2)(B)(ii) for such taxable  
14 year determined without regard to  
15 this paragraph, and

16 “(II) the amounts which, by rea-  
17 son of this paragraph, are carried to  
18 such taxable year and are attributable  
19 to taxable years before the unused  
20 amount.

21 “(3) SEPARATE APPLICATION TO EACH POSSES-  
22 SION.—For purposes of determining the amount of  
23 the credit allowed under this section, this section  
24 shall be applied separately with respect to each pos-  
25 session.”.

1 (b) CONFORMING AMENDMENTS.—

2 (1) Section 904(b) of the Internal Revenue  
3 Code of 1986 is amended by redesignating para-  
4 graph (4) as paragraph (5) and by inserting after  
5 paragraph (3) the following new paragraph:

6 “(4) COORDINATION WITH SECTION 30E.—For  
7 purposes of subsection (a), in the case of a qualified  
8 domestic corporation described in section  
9 30E(b)(1)(A), the taxable income shall not include  
10 any portion thereof taken into account for purposes  
11 of the credit (if any) allowed by section 30E (with-  
12 out regard to subsection (c) thereof).”.

13 (2) Section 904(f)(1) of such Code is amended  
14 by inserting “and section 30E” after “For purposes  
15 of this subpart”.

16 (3) Section 904(g)(1) of such Code is amended  
17 by striking “section 936” and inserting “section  
18 30E”.

19 (4) The table of sections for subpart B of part  
20 IV of subchapter A of chapter 1 of such Code is  
21 amended by adding at the end the following:

“Sec. 30E. Possession economic activity credit.”.

22 (c) TREATMENT OF CREDIT UNDER BEAT.—Section  
23 59A(b)(1)(B)(ii) of the Internal Revenue Code of 1986 is  
24 amended by redesignating subclause (II) as subclause

1 (III) and by inserting after subclause (I) the following new  
2 subclause:

3                                   “(II) the credit allowed under  
4                                   section 30E, plus”.

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