

117TH CONGRESS
1ST SESSION

S. 2485

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

IN THE SENATE OF THE UNITED STATES

JULY 27, 2021

Mr. MENENDEZ 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 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) the wage and asset limitation
2 with respect to such corporation, and

3 “(B) in the case of a qualified domestic
4 corporation described in subsection (b)(1)(B),
5 the lesser of—

6 “(i) the intangible low-taxed income
7 tax amount, or

8 “(ii) the sum of the qualified domestic
9 corporation’s pro rata share (determined in
10 a manner similar to the manner provided
11 in section 951A(e)(1)) of the wage and
12 asset limitations with respect to each for-
13 eign qualified corporation of which such
14 qualified domestic corporation is a United
15 States shareholder.

16 “(b) QUALIFIED DOMESTIC CORPORATION; QUALI-
17 FIED CORPORATION.—For purposes of this section—

18 “(1) IN GENERAL.—The term ‘qualified domes-
19 tic corporation’ means any domestic corporation
20 which is—

21 “(A) a qualified corporation, or

22 “(B) a United States shareholder of a for-
23 eign corporation which—

24 “(i) is a qualified corporation, and

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.—

“(A) IN GENERAL.—In the case of a United States shareholder of a foreign corporation which—

“(i) is not a qualified corporation but with respect to which the ownership requirements of paragraph (1)(B)(ii) are met, and

“(ii) has an eligible foreign business unit which, if such unit were a corporation, would be a qualified corporation with respect to which such ownership requirements would be met,

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

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

provision under this title), which maintains separate books and records.

“(C) SPECIAL ELECTION FOR AFFILIATED GROUPS.—In the case of an affiliated group described in paragraph (1)(B)(ii), the election under subparagraph (A) with respect to any eligible foreign business unit shall be made by the common parent of such group and shall apply uniformly to all members of such group which are United States shareholders with respect to the foreign corporation which has such unit.

“(c) WAGE AND ASSET LIMITATION.—

“(1) IN GENERAL.—The wage and asset limitation with respect to any qualified corporation for any taxable year is an amount equal to the sum of the following amounts:

“(A) 40 percent of the sum of—

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

“(ii) the allocable employee fringe benefit expenses of the qualified corporation 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

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

“(ii) TREATMENT OF PART-TIME EMPLOYEES, ETC.—If—

“(I) any employee is not employed by the qualified corporation on a substantially full-time basis at all times during the taxable year, or

“(II) the principal place of employment of any employee with the qualified corporation is not within a possession at all times during the taxable year,

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

“(C) TREATMENT OF CERTAIN EMPLOYEES.—The term ‘qualified possession wages’ shall not include any wages paid to employees 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 “(i) which is used by the qualified cor-
 2 poration in a possession of the United
 3 States in the active conduct of a trade or
 4 business within such possession,

5 “(ii) to which section 168 applies, and

6 “(iii) which is not 3-year property for
 7 purposes of such section.

8 “(d) INTANGIBLE LOW-TAXED INCOME TAX
 9 AMOUNT.—For purposes of this section—

10 “(1) IN GENERAL.—The intangible low-taxed
 11 income tax amount is an amount equal to the lesser
 12 of—

13 “(A) the eligible possession intangible low-
 14 tax income tax amount, or

15 “(B) the global intangible low-taxed in-
 16 come tax amount.

17 “(2) ELIGIBLE POSSESSION INTANGIBLE LOW-
 18 TAXED INCOME TAX AMOUNT.—

19 “(A) IN GENERAL.—The eligible possession
 20 intangible low-taxed income tax amount is an
 21 amount equal to the excess of—

22 “(i) the product of—

23 “(I) the rate in effect under sec-
 24 tion 11 for the taxable year, and

1 “(II) the sum of the possession
2 intangible low-taxed income amount
3 for such taxable year and the amount
4 which would be treated as a dividend
5 under section 78 if only amounts at-
6 tributable to such possession intan-
7 gible low-tax income amount were
8 taken into account under such section
9 for such taxable year, reduced by the
10 possession ILTI deduction for such
11 taxable year, over

12 “(ii) an amount equal to the amount
13 described in section 960(d), determined—

14 “(I) by substituting ‘possession
15 intangible low-taxed income amount
16 (as defined in section 30E(d)(2)(B))’
17 for ‘global intangible low-taxed income
18 (as defined in section 951A(b))’ in
19 paragraph (2)(A) thereof, and

20 “(II) by only taking into account
21 income from the active conduct of a
22 trade or business and from sources
23 (determined under rules similar to the
24 rules of part I of chapter N) within
25 possessions of the United States for

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 “(2) section 541 (relating to personal holding
2 company tax), or

3 “(3) section 1351 (relating to recoveries of for-
4 eign expropriation losses).

5 “(g) OTHER RULES.—

6 “(1) DENIAL OF DOUBLE BENEFIT.—

7 “(A) BRANCHES.—In the case of a quali-
8 fied domestic corporation described in sub-
9 section (b)(1)(A)—

10 “(i) no credit or deduction shall be al-
11 lowed under this chapter for—

12 “(I) the portion of the wages or
13 salaries paid or incurred for the tax-
14 able year which is equal to the
15 amount of wages taken into account
16 in determining the wage and asset
17 limitation under subsection (c)(1)(A),

18 “(II) the portion of employee
19 fringe benefit expenses for the taxable
20 year which is equal to the amount of
21 such expenses taken into account in
22 determining the wage and asset limi-
23 tation under subsection (c)(1)(A), and

24 “(III) the portion of depreciation
25 allowances for the taxable year which

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

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

“(I) the wage and asset limitation with respect to such corporation for such taxable year determined without regard to this paragraph, and

“(II) the amounts which, by reason of this paragraph, are carried to such taxable year and are attributable to taxable years before the unused amount.

“(B) CONTROLLED FOREIGN CORPORATIONS.—

“(i) IN GENERAL.—In the case of a qualified domestic corporation described in subsection (b)(1)(B), if the amount described in subsection (a)(2)(B)(ii) for any taxable year exceeds the intangible low-taxed income tax amount, then such excess shall be a carryover to the first preceding taxable year and to any of the first 10 succeeding 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.

○